

Eliminating the distinction between public and private sector corruption in Singapore

Corruption in Singapore has been characterised by high-profile cases involving public officials. For example, in 2014, two former senior public officials were prosecuted for allegedly obtaining sexual gratification in exchange for favouring certain companies; in the same year, a university professor was prosecuted for obtaining sexual gratification and other gifts from a student in exchange for better grades. These cases have raised and clarified interesting issues in relation to Singapore's anti-corruption laws.

Most recently, however, the Singapore High Court in *Public Prosecutor v Syed Mostofa Romel* [2015] SGHC 117 made clear that private sector bribery was equally abhorrent, tripling the jail term (from two to six months) of a marine surveyor convicted on corruption charges relating to the receipt of bribes to omit safety breaches in his reports.

This case is significant for the guidance it gives on sentencing of corruption charges. More importantly, it dispels the perceived distinction between corruption in the private and public sectors.

Summary of facts

The accused was an associate consultant with a marine surveying firm. His job was to inspect vessels before they were allowed to be docked at port terminals, in order to ensure that the documentation of incoming vessels was in order, and that the vessel was seaworthy. If a vessel was classified as high-risk, it would not be allowed to dock unless and until it rectified any problems identified by the surveyor.

In the course of an inspection of an oil tanker off Singapore's Jurong Island on 10 March 2014, the consultant informed the tanker's captain and chief engineer of several observations he would be making that would result in a high-risk certification. The captain argued that the defects were minor ones which could be readily rectified. He asked the consultant how the situation could be resolved and the consultant informed him that money would do so.

The consultant omitted the high-risk observations when an agreement was reached as to a suitable sum, but the captain reported the incident once the tanker docked.

"[T]his type of corruption is antithetical to everything Singapore stands for" and that "clean and honest dealing is one of [Singapore's] key competitive advantages and corruption compromises the predictability and openness which Singapore offers and investors have come to expect. This is a hard won prize achieved through our collective efforts as a society and we must not allow these to be undone."

Chief Justice Sundaresh Menon,
Public Prosecutor v Syed Mostofa Romel [2015] SGHC 117

The District Court convicted the consultant, but the Prosecution appealed the two-month sentence imposed, as "*manifestly inadequate*."

Judgment

The Singapore High Court issued a written judgment on 28 April 2015, tripling the custodial sentence of the accused to six months. In doing so, the Court explicitly rejected as a misperception that only public sector corruption was punishable by custodial sentences while private sector corruption would typically attract only a fine.

The Court noted that with public services being increasingly outsourced, there is a need to hold the private sector accountable for the public services they are responsible for delivering.

The Court stated that although "*the ways in which private sector corruption can manifest its ugly head are diverse,*" they could be fit into three broad (and non-exhaustive) categories.

1. Those who accept kickbacks for conferring benefits will be given a custodial sentence depending on the specific facts of the case.
2. Those who solicit bribes in return for not discharging their duties can also expect custodial sentences.
3. Those who solicit bribes by threatening to withhold the legitimate rights of others can expect custodial sentences.

The Court pointed out the heightened culpability in the third category because the threat of harm to the paying party without a lawful basis will generally result in the paying party being deprived of his legitimate rights unless he pays a bribe. For example, a bribe may be solicited for the timely processing of applications for licences/permits, or to ensure that "*an applicant's application is...not somehow inexplicably misplaced.*"

Such offences should result in custodial sentences, because they destroy Singapore's reputation for transparency in the business context. Indeed, the Court observed that such acts which undermine legitimate rights "*will not be tolerated and will be severely dealt with.*"

Accordingly, the Court found that the conduct of the consultant fell into the third category. Further, the Court held that undue weight had been given by the trial judge to his guilty plea.

Implications

This case highlights the stringent approach of the Singapore courts towards corruption in both the public and private sector.

This case further affirms the zero tolerance policy for corruption in Singapore, regardless of rank and seniority, both in the public and private sectors.

Similarly, in January 2015, the Prime Minister of Singapore also announced a number of key developments in this area:

1. The Government is reviewing the Prevention of Corruption Act (Singapore's principal anti-corruption law) with a view to keeping pace with international developments.
2. The Corrupt Practices Investigation Bureau (Singapore's central agency for investigating corruption) will have its manpower increased by 20% from its current strength of about 120.
3. A Corruption Reporting Centre will be set up in the city centre so that the public can report graft incidents more discreetly and at a more publicly accessible location. This supplements the current avenues available for the public to report corruption to the Corrupt Practices Investigation Bureau.

These recent development demonstrate Singapore's commitment to maintain the country's leading reputation for transparency, openness, and insusceptibility to corruption.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com
www.cavenaghlaw.com.sg

Clifford Chance Asia

Clifford Chance Asia is a Formal Law Alliance between Clifford Chance Pte Ltd and Cavenagh Law LLP
12 Marina Boulevard, 25th Floor Tower 3,
Marina Bay Financial Centre, Singapore 018982
© Clifford Chance and Cavenagh Law LLP 2015
500986-4-6914-v0.4

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta* ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Linda Widyati & Partners in association with Clifford Chance.

Contacts



Wendy Wysong
Partner

T: +852 2826 3460 (Hong Kong)
+1 202 290 7634 (Washington)
E: wendy.wysong
@cliffordchance.com



Nish Shetty
Partner

T: +65 6410 2285
E: nish.shetty
@cliffordchance.com



Kabir Singh
Partner

T: +65 6410 2200
E: kabir.singh
@cliffordchance.com



Diana Chang
Partner

T: +61 2 8922 8003
E: dianna.chang
@cliffordchance.com



Michelle Mizutani
Counsel

T: +81 3 5561 6646
E: michelle.mizutani
@cliffordchance.com



Yu Bing
Counsel

T: +86 21 2320 7372
E: bing.yu
@cliffordchance.com



Montse Ferrer
Registered Foreign Lawyer

T: +852 2826 3562
E: montse.ferrer
@cliffordchance.com



Shobna Chandran
Senior Associate

T: +65 6410 2281
E: shobna.chandran
@cliffordchance.com



Jeremy Ong
Trainee Solicitor

T: +65 6506 2750
E: jeremy.ong
@cliffordchance.com