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Anti-Corruption 2022

Singapore: Trends & Developments
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Trends and Developments

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Trends and Developments in Anti-Corruption Framework in Singapore

General outlook in Singapore amidst the COVID-19 pandemic

A strict anti-corruption regime is a key driving force of Singapore's rapid economic growth. The anti-corruption measures are founded on the following four core areas.

- A strong political will to weed out corrupt activities across all segments of society, regardless of whether they occur in the private or public sector.
- Effective legislation which empowers regulatory agencies to commence prompt and robust investigation. Legislation also defines corruption offences broadly to ensure the furthest reach and provides for the seizure and forfeiture of proceeds of crime arising from corruption.
- A dedicated enforcement agency authorised to investigate corruption offences, the Corrupt Practices Investigation Bureau (CPIB), which was established in 1952. The CPIB is an enforcement agency under the direct purview of the Prime Minister's Office and operates independently from the Singapore Police Force.
- A process of transparent and effective adjudication in which the Singapore courts render decisions on both public sector and private sector corruption. Underpinning the severe sentences meted out by the Singapore courts is a strong deterrent message that corruption does not pay.

In recent years, Singapore has continued to achieve success in its anti-corruption efforts, both from an international and domestic per-

spective. Public perception of the effectiveness of Singapore's measures to control corruption has improved from 92% in 2018 to 94% in 2020. On the international scene, Singapore was ranked third out of 180 countries in the 2020 Corruption Perceptions Index (CPI).

Since the outbreak of COVID-19, CPIB has received 239 corruption-related reports, the lowest number of such reports in the past five years. A plausible explanation for the decrease in the number of corruption-related reports lodged with the CPIB is the fall in economic activities in the private sector due to the ongoing COVID-19 pandemic. Of the 239 reports received, CPIB registered 81 new cases for investigations in 2020, which represented a significant 32% reduction of new cases registered in 2019.

Notwithstanding the decline in economic activities in Singapore over the past year amidst the COVID-19 pandemic, the majority of corruption-related prosecutions continue to involve the private sector. Consequently, private companies and corporations have continued to be the focus of regulation and enforcement action. This has in turn compelled many corporations to enhance their internal anti-corruption and anti-money laundering processes and control measures, through more robust detection protocols and regular training for employees.

Judicial approach towards corruption-related prosecutions

In 2020, even in the midst of the COVID-19 pandemic, the Singapore High Court introduced new sentencing frameworks for purely private corruption offences and public sector corruption offences in two different cases. This paper

seeks to highlight the recent developments in sentencing practices which aim to achieve a more nuanced approach towards achieving the appropriate punishment that befits each individual case while ensuring consistency across similar offences. It is significant to note that sentencing trends have departed from the prevailing conception that private sector corruption should typically attract a non-custodial sentence.

These recent sentencing trends have an impact not only on criminal defence work, but also on the compliance measures that corporations should develop in enhancing their anti-corruption and bribery policies.

Sentencing framework for purely private corruption offences

In *Takaaki Masui v Public Prosecutor and another appeal and other matters* [2020] SGHC 265 (“*Takaaki Masui*”), the Singapore High Court introduced a new sentencing framework for private corruption offences under Sections 6(a) and 6(b) of the Prevention of Corruption Act (Chapter 241) (PCA). *Takaaki Masui* involved one of Singapore’s most serious private sector corruption cases to date. The two accused persons were employees of a Japanese commodities company who induced a sole proprietor of an edible flour distributor to participate in an unauthorised profit-sharing arrangement in relation to the industrial flour business. Between both accused persons, they extracted more than SGD2 million in bribes from the flour distributor between 2004-07.

Takaaki Masui is a significant decision as the High Court adopted an analytical two-staged, five-step framework using mathematical formulae and a combination of two-dimensional and three-dimensional graphs to derive the sentencing framework.

In summary, the two-staged framework in *Takaaki Masui* reflects a sentencing court’s consideration of:

- offence-specific factors, which relate to the severity of the offence committed; and
- offender-specific factors, which relate to the personal circumstances of the offender, such as the aggravating and mitigating factors that are personal to the offender.

To provide for a more nuanced, indicative starting sentence that is highly attuned to the particular facts of each case, the High Court applied the five-step analysis to the two-stage approach.

At “Step 1”, the sentencing court identifies and assesses the relevant offence-specific factors present on the facts of each case. This step also entails an assessment of the specific degree of severity for the harm and culpability parameters to be applied as key inputs to the framework. The High Court provided a non-exhaustive list of offence-specific factors to be considered in private-sector corruption cases as set out below.

Factors going towards harm:

- actual loss caused to principal;
- benefit to the giver of gratification;
- harm caused to the giver of gratification;
- type and extent of loss to third parties;
- public disquiet;
- offences committed as part of a group or syndicate;
- involvement of a transnational element; and
- amount or value of gratification given or received.

Factors going towards culpability:

- degree of planning and premeditation;
- level of sophistication;
- duration of offending;

- extent of the offender’s abuse of position and breach of trust;
- offender’s motive in committing the offence;
- the presence of threats, pressure or coercion; and
- amount or value of gratification given or received.

Following a consideration of the offence-specific factors, the analysis proceeds to “Step 2” and “Step 3”, where the sentencing court determines where the offence lies within various matrices which the High Court in *Takaaki Masui* has utilised. Depending on the matrix used, a definitive indicative starting sentence as a key output would be thrown up.

At Steps 2 and 3 of the framework, the “Modified Harm-Culpability Matrix” or the “Contour Matrix” are to be applied. These matrices were formulated by the High Court to provide guidance and promote consistency on assessing the gravity of any offence of corruption.

At “Step 4”, the court considers the offender-specific factors which do not directly relate to the facts and circumstances of the offence in question but are generally applicable across all criminal offences. This enables the presiding court to take into account unique facts, while retaining some discretion over the sentence to be imposed.

Aggravating factors:

- offences taken into consideration for sentencing purposes;
- relevant antecedents; and
- evident lack of remorse.

Mitigating factors:

- a guilty plea;
- co-operation with the authorities; and

- actions taken to minimise harm to victims.

At “Step 5”, after determining the sentences for each charge, the sentencing court is required to apply the totality principle in determining the aggregate sentence to be imposed on the offender. This is a sentencing principle which requires the court to ensure that the aggregate sentence imposed is proportionate to the offender’s criminality as a whole.

Takaaki Masui was a landmark decision as this was the first time the Singapore High Court established a comprehensive sentencing framework, premised on the parameters of harm and culpability, for private corruption offences. The *Takaaki* sentencing framework was also novel for the following reasons.

- It went beyond the traditional frameworks which mostly considered a list of (non-exhaustive) offender-specific and offence-specific factors to determine the level of harm and extent of culpability in each case.
- It involved prescriptive steps to derive an indicative starting sentence or sentencing range, while retaining judicial discretion in the sentencing process so that justice can be meted out to each individual case.

It was also the first sentencing framework in local jurisprudence which went beyond merely considering a list of (non-exhaustive) offender-specific and offence-specific factors to determine levels of harm and culpability, which were prevalent in most traditional sentencing frameworks. It is further observed that by utilising the prescriptive matrices as laid down by the High Court, a sentencing judge would be able to calibrate the twin parameters of “harm of the offence” and “culpability of the offender” more accurately against the full range of statutorily prescribed punishment.

Sentencing framework for public sector corruption offences involving agents

Whilst private corruption cases comprise the bulk of court prosecutions, several high-profile public sector corruption cases have dominated public interest in Singapore in the past two years. Where the corrupt offence committed concerns a matter or transaction that involves a contract with the government or with any public body (or a subcontract to execute any work comprised in such a contract), the offender is subject to enhanced punishment under the Prevention of Corruption Act (Chapter 241) (PCA). Under the PCA, public sector corruption is considered aggravated as it undermines the integrity of the government and erodes the public's trust and confidence in the state's machinery. The recent spate of prolific public sector corruption cases include the following two cases.

In 2021, the former deputy group director of the Singapore Land Transport Authority (LTA) pleaded guilty to seven charges of taking bribes in the form of loans amounting to SGD1.24 million to advance the business interests of contractors and subcontractors. He was sentenced to five-and-a-half years' imprisonment for his offences, and ordered to serve an additional year in prison, in default of paying a penalty of about SGD1.5 million for the amount of bribes not disgorged. Other individuals who were also charged in connection to this matter included the project director and project manager of Korean conglomerate Daewoo Engineering and Construction, both of whom were sentenced to imprisonment for eight months for conspiring to bribe the former LTA director with SGD30,000.

In *PP v Wong Chee Meng* and another appeal [2020] SGHC 144 ("*Wong Chee Meng*"), two individuals, one of whom was the general manager ("GM") of a town council (an entity formed by at least one elected member of parliament and residents, which is responsible for manag-

ing the common property of residential flats and property within the town), were convicted after trial for corruption-related offences. From 2014-16, the GM corruptly received and obtained various forms of gratification (examples included remittances to the GM's mistress and entertainment expenses) from a shareholder and director of companies, Chia, which were in the business of providing construction-related works for various town councils in Singapore. In return, the GM advanced the business interests of Chia's companies by preferring the tenders submitted by these companies, adjusting the town council's tender requirements to suit the companies' specifications and providing input to Chia on the companies' bid pricing and technical information.

In *Wong Chee Meng*, the Singapore High Court set out a sentencing framework for aggravated offences committed under Section 6 read with Section 7 of the PCA (especially for public sector corruption cases). The High Court in *Wong Chee Meng* held that the prevailing approach of simply identifying certain factors in the sentencing process was not always conducive to achieving broad consistency in sentencing across cases, and sentences that were either too long or too short could have an undesirable cascading effect on future cases.

Accordingly, a sentencing framework that was modeled on a two-stage, five-step framework was established in *Wong Chee Meng*.

The first step, which would apply only to offences under Section 6 read with Section 7 of the PCA, involves identifying the offence-specific factors in the case. A non-exhaustive list of relevant offence-specific factors was identified by the High Court and set out below.

Factors going towards harm:

- actual loss caused to principal
- benefit to the giver of gratification
- type and extent of loss to third parties;
- public disquiet;
- offences committed as part of a group or syndicate; and
- involvement of a transnational element.

Factors going towards culpability:

- amount of gratification given or received;
- degree of planning and premeditation;
- level of sophistication;
- duration of offending;
- extent of the offender's abuse of position and breach of trust; and
- offender's motive in committing the offence.

At this stage, the relevant offender-specific factors should also be identified. The High Court set out a list of non-exhaustive factors, as reproduced below.

Aggravating factors:

- offences taken into consideration for sentencing purposes;
- relevant antecedents;
- evident lack of remorse;

Mitigating factors:

- a guilty plea;
- co-operation with the authorities; and
- actions, remedial or otherwise, taken to minimise harm to victims.

The second and third step involve identifying the indicative sentencing range for the offence in question by utilising a harm-culpability matrix as set out by the High Court for public sector corruption offences. The sentencing court is then required to make adjustments to the indicative sentencing range by taking into account offend-

er-specific factors. Finally, further adjustments to the indicative sentence may be made by taking into account the totality principle.

With the High Court's decision in *Wong Chee Meng*, further guidance has been given to sentencing courts to derive an appropriate sentence in a novel fact scenario which is crucial in the context of corruption offences that often manifests in a variety of ways.

Implications of the new sentencing frameworks in Singapore's legal and enforcement landscape

These recent sentencing frameworks for corruption offences have provided much-needed guidance for future cases, in an area of white-collar crime that encompasses a wide spectrum of factual scenarios. In the authors' view, the creation of new sentencing frameworks for specific offences under the PCA is also an implicit recognition by the High Court that a more systemic and methodical approach towards sentencing is required for corruption offences in the interest of meting out individualised justice for each case while ensuring consistency in the sentencing outcome. As observed by the High Court in both *Takaaki Masui* and *Wong Chee Meng*, consistency in sentencing is crucial in two aspects: (i) consistency in methodology; and (ii) consistency in sentencing outcome. It is also expected that punishment imposed on offenders would be generally enhanced.

As a corollary, it is evident that the Singapore judiciary continues to play a key role in the nation's fight against corruption, even in the midst of the COVID-19 pandemic. It is believed that the courts have identified the pressing need to create new sentencing frameworks for private and public corruption offences which sends a strong deterrent message to potential offenders. In fact, when the High Court applied the new sentencing framework in *Wong Chee Meng*, the

custodial sentences previously imposed by the trial judge were lengthened.

The authors have identified two key areas that are called into focus in the light of these recent sentencing trends.

The first area concerns criminal defence work where defence lawyers are better equipped to advise clients on sentencing outcomes which ought to be broadly similar to the actual outcome (barring exceptional circumstances) derived by the courts by applying the relevant sentencing frameworks. This enables a more efficient resolution of cases from the time an offender is first charged in court for an offence, as both the prosecution and defence may adopt a more targeted approach in determining discrete facts or issues affecting a sentence during plea negotiations that typically occur.

The second area relates to the implications on companies as they grapple with the ever-changing landscape of regulatory enforcement. Having regard to the list of (non-exhaustive) offence-specific and offender-specific factors identified in both the sentencing frameworks discussed above, the authors believe that corporate compliance programmes must be continuously enhanced in the fight against corruption. Early detection of corrupt culture or practices within any organisation is key. With Singapore's growing status as a global financial hub, there is an increasing flow of foreign investment into the country with more multinational corporations setting up regional or representative offices in Singapore. The authors have made some observations in Takaaki Masui and Wong Chee Meng that are particularly relevant from a compliance perspective.

Amount of gratification given or received

Unlike some jurisdictions, Singapore law does not prescribe any minimum quantum in respect

of transactions that may be perceived as a bribe. In fact, the PCA has framed the offence of corruption very broadly to include any unquantifiable favour, benefit, entertainment, advantage or service. Nevertheless, in Takaaki Masui, the High Court has indicated that generally, any bribe in excess of SGD20,000 would likely attract a hefty term of imprisonment because of the view that the amount of the bribe reflects the extent of the corrupt influence.

Public service rationale

The party who initiated the corrupt transaction is typically perceived as being more culpable and the presence of threats, coercion or pressure is seen as aggravating circumstances. The High Court in Takaaki Masui also made reference to the "public service rationale", which is a principle that refers to not just public sector corruption, but also a category of private sector corruption offences that is seen as especially egregious. This principle has been defined to refer to "public interest in preventing a loss of confidence in Singapore's public administration". With the consequence of attracting severe punishment, it is triggered when private sector corruption is committed in the course of managing public funds and public services. This category also includes private sector businesses that play a public or quasi-public regulatory or oversight role.

While internal corporate investigations are a measure to respond to corruption and fraud, organisations should also take proactive steps to combat corruption, by way of implementing an anti-corruption risk management framework within the corporation for instance. With the advent of new technology, data analytics is an increasingly important and cost-effective tool to assess anti-bribery and anti-corruption controls. We believe that going forward, more organisations will turn to proactive data analytics as part of their risk management policy and framework.

SINGAPORE TRENDS AND DEVELOPMENTS

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In addition, an adequate risk assessment policy must include a clear code of conduct and anti-fraud standards, process-specific controls, ongoing monitoring and auditing with reliable whistle-blower mechanisms.

Rajah & Tann Singapore LLP has built a white-collar crime team that has earned a reputation as a leading practice both regionally and domestically, with an extensive portfolio that spans a spectrum of white-collar defence work, fraud investigations and advisory work. The team's notable cases include advising corporations, financial institutions and individuals in complex, multi-jurisdictional matters such as the Petrobras Brazilian bribery scandal, the Malaysian 1MDB scandal and the Wirecard scan-

dal. This team forms an integral component of the firm's fraud, asset recovery, investigations and crisis management team, which has been globally recognised. Rajah & Tann Singapore is a member firm of Rajah & Tann Asia, a network of over 800 fee earners across ten jurisdictions; it has the reach and resources to deliver excellent service to clients in the region including Singapore-based regional desks focusing on Brunei, Japan and South Asia.

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