THE LATEST REGIONAL TRENDS IN CORRUPTION AND EFFECTIVE COUNTERMEASURES BY CRIMINAL JUSTICE AUTHORITIES

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The focus of this paper is developments in sentencing for corruption offences in Singapore, with a particular focus on private sector corruption. In the course of this discussion, we will highlight seminal cases that have set out the crucial sentencing principles, discuss recent developments in case law interpreting relevant deeming provisions of the Prevention of Corruption Act (the primary legislation in Singapore dealing with corruption offences) that impact sentencing, and finally, future potential developments.

The paper is structured as follows:

a. Sentencing principles in private sector corruption;

b. Recent developments in case law interpreting provisions of the Prevention of Corruption Act regarding inchoate offences; *and*

c. Potential future developments including that of a sentencing framework for corruption offences.

I. INTRODUCTION: SENTENCING IN PRIVATE SECTOR CORRUPTION

The effective deterrence of corruption requires a multi-pronged approach. Stiff imprisonment terms are usually meted out for offenders in public sector corruption, given the obvious harm and public interest in deterring such offences, which tend to undermine the integrity of Singapore's public administration.

However, this does not mean that private sector corruption offences are *ipso facto* less serious than corruption in the public sector. Corruption in the private sector imposes hidden costs to the economy and undermines the sanctity of contract and its role as a facilitative institution in a society governed by the rule of law.

Recent developments in sentencing practice have centred on private sector corruption, as these form the vast majority of cases prosecuted. Further, there had previously existed a prevailing misconception that private corruption typically attracts fines (and not imprisonment), which has been corrected through High Court precedents expounding upon the relevant principles (as discussed in Part II). Our focus has therefore now turned to developing a broader sentencing framework that can be applied to both public and private sector corruption, which

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takes into account how the harm of the offences and culpability of the offender should be calibrated against the full range of statutorily prescribed punishment (as discussed in Part IV).

II. SENTENCING PRINCIPLES IN CASE LAW – PRIVATE SECTOR CORRUPTION

Public Prosecutor v Ang Seng Thor [2011] 4 SLR 217 is a seminal decision concerning the principles to be applied in sentencing in private sector corruption. In that case, Ang Seng Thor ("Ang"), a Singapore citizen, was the CEO and joint-Managing Director of a company called AEM-Evertech Holdings Ltd, which was listed on the Singapore Stock Exchange. He was prosecuted on two counts of corruptly giving gratification, one of which involved him giving a bribe of S$50,000 in Malacca to a director of a Malaysian company in order to secure a deal for AEM.[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.

Ang pleaded guilty to both charges. At first instance, he was sentenced by the District Judge to the maximum fine of $100,000 for each charge (i.e. a total sentence of a $200,000 fine). The Prosecution appealed against this sentence on the basis that it was manifestly inadequate, and submitted that a custodial sentence should be imposed on Ang in addition to a fine and disqualification from acting as a director.

The Prosecution's appeal was allowed. On appeal, 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 a fine of S$50,000.

Significantly, on appeal, V K Rajah JA commented that the District Judge erred in finding a distinction between public sector corruption and private sector corruption which justified different sentencing benchmarks or starting points.

He further 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 does not automatically mean that such public interest was not present in private sector corruption. More importantly, triggering the public interest is *not* the only way that a custodial sentence may be imposed for private sector corruption. The custodial threshold may be crossed in other circumstances, depending on the applicable policy considerations and the gravity of the offence as measured by the mischief of likely consequence of the corruption. Furthermore, factors such as the size of the bribes, the number of people drawn into the web of corruption and whether such conduct was endemic are all relevant factors in determining whether a custodial sentence is justified. It is important to dispel the misconception that private sector offenders would not be punished to the same extent as public sector offenders – This would undermine the anti-corruption regime in Singapore. This is especially when one

[6] NB: Though the bribe was handed over in Malaysia, Ang was prosecuted in Singapore pursuant to Section 37 of the Prevention of Corruption Act, which makes Singapore citizens liable for corruption offences committed outside of Singapore and to be dealt with in respect of that offence *as if it has been committed within Singapore*.

considers the limited deterrent value of the maximum fine against private sector offenders like Ang (who was of means).

The principles espoused in *Ang Seng Thor* were reaffirmed by Chief Justice Sundaresh Menon in *Public Prosecutor v Syed Mostafa Romel* [2015] 3 SLR 1166, i.e. that "t*here is no presumption in favour of a non-custodial sentence where private sector corruption is concerned*", and the specific nature of corruption was of paramount importance in determining the appropriate sentence to be imposed. Menon CJ found it timely to reiterate the *Ang Seng Thor* principles as they had not been consistently followed subsequent to that case. Moreover, Menon CJ remarked that the increased outsourcing of public services and the corresponding rise of the ability of private actors to influence the public interest required more accountability for public monies spent. Accordingly, where the private sector corruption involved a) a significant amount of gratification b) gratification which had been received over a lengthy period of time or c) compromised of one's duty or a 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. If the defects identified were high-risk, the vessel would have to rectify the defects before being permitted to enter the terminal. Romel corruptly 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. On appeal, his sentence was enhanced to six months' imprisonment.

The *Romel* case is a landmark decision concerning the sentencing principles for private sector corruption cases in Singapore, and has been instrumental in forging the way forward for developing clearer guidelines for the prosecution of corruption offences in general, as will be considered in section IV below.

III. SENTENCING PRINCIPLES – INCHOATE OFFENCES

Recently, the Singapore High Court interpreted Sections 29, 30 and 31 of the Prevention of Corruption Act in *Public Prosecutor v Lau Cheng Kai*. The relevant sections read:

Abetment of Offences

29. Whoever abets, within the meaning of the Penal Code

(a) the commission of an offence under this Act; or

(b) the commission outside Singapore of any act, in relation to the affairs or business or on behalf of a principal residing in Singapore, which if committed in Singapore would be an offence under this Act, *shall be deemed to have committed the offence* and shall be liable on conviction to be punished with the punishment provided for that offence.

Attempts

30. Whoever attempts to commit an offence punishable under this Act *shall be deemed to have committed the offence* and shall be liable on conviction to be punished with the punishment provided for that offence.

Conspiracy

31. Whoever is a party to a criminal conspiracy, within the meaning of the Penal Code [Cap. 224], to commit an offence under this Act *shall be deemed to have committed the offence* and shall be liable on conviction to be punished with the punishment provided for that offence.

[Emphasis in provisions added]

Lau Cheng Kai involved three staff and an associate of Global Marine Transportation Pte Ltd ("GMT") and a suspected buyback on the vessel Demeter Leader. The Prosecution had proceeded to trial on a charge of criminal conspiracy under s5(b)(i) read with section 31 Prevention of Corruption Act, for a conspiracy to bribe chief engineers and surveyors for buyback. The evidence showed that at least USD30,000 had been set aside for the payment of such bribes, although there was no evidence that any part of the money had in fact been paid. The accused was convicted, and he appealed against conviction and sentence. The Prosecution cross-appealed on sentence.

The High Court dismissed the accused's appeals and allowed the Prosecution's cross-appeal. The High Court interpreted the above-named provisions and held that their effect is to deem inchoate offences as completed for the purpose of sentencing. In other words, the accused persons must be punished on the basis that the criminal conspiracy as planned was successfully carried out, even though the bribes (or any part thereof) had not been paid/proven to be paid. Accordingly, no mitigating weight or sentencing discount could be accorded on the basis that the corruption offence was factually not committed.

The High Court found that such an interpretation accorded with Parliament's intent to "*reduce the opportunities for corruption, to make its detection easier and to deter and punish severely those who are susceptible to it and engage in it shamelessly*." The deeming provision(s) provide the Prosecution with an expanded arsenal with which to effectively target persons involved in acts of corruption.

The High Court's judgment is a welcome clarification of the law which emphasizes the severity of corruption and judicial commitment to giving full effect to Parliament's approbation of corruption offences.

IV. POTENTIAL FUTURE DEVELOPMENTS – SENTENCING FRAMEWORK FOR CORRUPTION OFFENCES AND AMENDMENTS OF THE PREVENTION OF CORRUPTION ACT

Finally, we briefly consider potential future developments related to our efforts to develop a general sentencing framework for corruption offences.

The Singapore High Court has affirmed the principle that it is incumbent on a sentencing court to calibrate punishment against the full range of prescribed punishment (*Public Prosecutor v Hue An Li*). Since then, the Singapore High Court has issued several guideline judgments on sentencing for different types of criminal offences, adopting a variety of approaches – for example, an indicative sentence, a sentencing benchmark, a sentencing matrix or sentence bands. In late 2018, Chief Justice Sundaresh Menon issued a guideline judgment with the first sentencing framework for a financial crime (albeit not corruption- related), for cheating at play under Section 172A of the Casino Control Act.

In line with these judicial pronouncements, around this time, the Prosecution had also proposed a sentencing framework for corruption offences and had utilized it in three test cases. The State Courts have accepted the Prosecution's proposed sentencing framework in two of these cases but rejected it in the third. All three cases will be going on appeal before the High Court.

The approval of a sentencing framework for corruption offences by the High Court will be of great utility in the fight against corruption. Further, the benefits of adopting a sentencing framework include improving parity and consistency of sentencing, and ensuring that the full range of punishment (as prescribed by Parliament in statute) is utilized appropriately.

We are of the view that our efforts to develop a sentencing framework should be accompanied by increases in the maximum punishment for such offences. Such would signal a clear legislative intent to robustly deter corruption. Furthermore, it is necessary for the maximum fines to be sufficiently stiff so as to adequately deter corporations.

These developments, taken collectively, will be useful tools in our efforts to deter, prosecute and adequately punish corruption.

V. CONCLUSION

Singapore has made significant developments over the past decades in the fight against corruption – However, we are conscious of the need to continually strive to effectively combat corruption and preserve our society's zero-tolerance stance towards it. Sentencing principles and practice are important aspects of the fight against corruption, and we will continue to work to develop the law in this regard.