

# Singapore High Court Sets Out Revised Sentencing Framework for Private Sector Corruption Offences Under Sections 6(a) and (b) of Prevention of Corruption Act

The General Division of the Singapore High Court (**High Court**) has, in *Goh Ngak Eng v Public Prosecutor* [2022] SGHC 254, set out a revised sentencing framework for private sector corruption offences under sections 6(a) and (b) of the Prevention of Corruption Act (**PCA**) modelled after the two-stage, five-step framework in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 (**Logachev**).

## Our Comments

Corrupt business conduct is consistently viewed by the authorities with severe disapproval in Singapore, which prides itself on a business environment that is largely clean and corruption-free. The law draws a distinction between private sector corruption and corruption involving public agencies or officials; the latter has often been viewed as deserving of heavier punishment as it tends to directly compromise the integrity of State machinery and national resources.

The High Court has previously set out a sentencing framework for public sector corruption offences (*Public Prosecutor v Wong Chee Meng and another appeal*, in 2020). It has now also set out a revised sentencing framework for private sector corruption offences. This framework should serve as useful guidance for sentencing courts, and will hopefully promote greater transparency and consistency in sentencing for such offences.

This update takes a look at the High Court's decision, which also serves as a salutary reminder of the importance of ensuring that all business dealings remain graft-free as well as the consequences of failing to do so.

## Background

The appellant and another accused person had referred vendors for jobs at a shipyard to a co-conspirator, who awarded jobs accordingly. Over a three-year period, the vendors submitted invoices which included mark-ups for securing the jobs, which were duly paid by the shipyard. The appellant shared the mark-ups received with his co-conspirators. These illegal mark-ups totalled almost \$880,000, of which the appellant received in the region of \$191,000. There were also further charges involving the appellant having given corrupt gratification to other parties.

The appellant pleaded guilty before a District Judge to 15 charges of abetment by engaging in a conspiracy with two others to corruptly obtain gratification under section 6(a) of the PCA and four charges of corruptly giving gratification under section 6(b) of the PCA. The District Judge applied the then-prevailing sentencing framework in *Takaaki Masui v Public Prosecutor and another appeal and other matters* [2021] 4 SLR 160 (**Masui (HC)**) in arriving at a global sentence of 17 months and three weeks' imprisonment.

The appellant appealed to the High Court against his sentence, contending that it was manifestly excessive.

## The High Court's Decision

The High Court clarified the sentencing framework applicable to private sector corruption offences under sections 6(a) and (b) of the PCA. In particular, the High Court declined to endorse the earlier framework set forth in *Masui (HC)*. Further, although the High Court dismissed the appeal, it nevertheless enhanced the sentence imposed on the appellant.

### Revised sentencing framework

The High Court was of the view that the sentencing framework in *Masui (HC)* applied by the District Judge was excessively complex and technical. It instead set out a revised sentencing framework which adopted a similar approach to the two-stage, five-step framework formulated in *Logachev* (which was a case involving cheating in a casino), as follows:

- (a) **First stage:** The court determines an indicative starting point which reflects the intrinsic seriousness of the offending act through the following three steps:
- (i) **Step one:** The court identifies, by reference to offence-specific factors, the level of harm caused by the offence (“slight”, “moderate” or “severe”) as well as the level of the offender’s culpability (“low”, “medium” or “high”).

Offence-specific factors	
<u>Factors going towards harm</u>	<u>Factors going towards culpability</u>
(a) Actual loss caused to principal	(a) Amount of gratification given or received
(b) Benefit to the giver of gratification	(b) Degree of planning and premeditation
(c) Type and extent of loss to third parties	(c) Level of sophistication
(d) Public disquiet	(d) Duration of offending
(e) Offences committed as part of a group or syndicate	(e) Extent of the offender’s abuse of position and breach of trust
(f) Involvement of a transnational element	(f) Offender’s motive in committing the offence
(g) Whether the public service rationale is engaged	(g) Presence of threats, pressure or coercion
(h) Presence of public health or safety risks	(h) The role played by the offender in the corrupt transaction
(i) Involvement of a strategic industry	
(j) Bribery of a foreign public official	

- (ii) **Step two:** The court identifies the applicable indicative sentencing range, by reference to the level of harm caused and the level of the offender’s culpability.

Culpability \ Harm	Harm		
	Slight	Moderate	Severe
Low	Fine or up to 6 months’ imprisonment	6 to 12 months’ imprisonment	1 to 2 years’ imprisonment
Medium	6 to 12 months’ imprisonment	1 to 2 years’ imprisonment	2 to 3 years’ imprisonment
High	1 to 2 years’ imprisonment	2 to 3 years’ imprisonment	3 to 5 years’ imprisonment

- (iii) **Step three:** The court identifies the appropriate starting point within that sentencing range given the offence-specific factors and considers the harm and culpability levels associated with the offending conduct. The High Court emphasised that this should not be a “double-counting” of any factors, but rather an exercise of granulating the case to arrive at a sense of what the starting point should be.

- (b) **Second stage:** The court adjusts the starting point that was identified at the first stage based on the other aggravating and/or mitigating circumstances and considers whether the overall sentence is proportionate and consistent with the offender’s overall criminality. This involves two steps:

- (i) **Step four:** The court adjusts the starting point in light of offender-specific factors including aggravating factors (e.g., multiple or repeated offending, the offender’s position or role, relevant antecedents and/or lack of remorse) and mitigating factors (e.g., guilty plea, voluntary restitution for property-related offences, and/or cooperation with the authorities). Where these factors are strongly present, the court might find it necessary to adjust the sentence beyond the indicative sentencing range identified under the second step.
- (ii) **Step five:** Where an offender has been convicted of multiple charges, the court must consider whether further adjustments should be made to the sentence for individual charges to ensure that the final, aggregate sentence is sufficient and proportionate to the overall criminality. This is commonly known as the “totality principle”.

The High Court explained why this was an appropriate sentencing framework for sections 6(a) and (b) corruption offences: Through the first stage, the framework takes into account the severity of the offending conduct by reference to the salient offence-specific factors, and hence encapsulates the diverse circumstances of private sector corruption. In addition, the established jurisprudence relating to corruption offences under sections 6(a) and (b) assists in identifying salient features of offending conduct from which relevant offence-specific factors can be derived, and gives the court a sense of

how the sentencing spectrum under sections 6(a) and (b) should be spread across the harm/culpability categories at step two of the framework.

### *Inapplicability to offences under section 5 of PCA or public sector corruption cases*

There are however limits to the applicability of this revised sentencing framework. The High Court clarified that it should not extend to offences under section 5 of the PCA, as section 5 and section 6 offences are directed at distinct mischiefs and engage different considerations in the sentencing exercise.

The High Court also took the view that the revised sentencing framework should not extend to *public* sector corruption offences under sections 6(a) and (b), given that the distinct and overarching sentencing consideration in those cases is the distinct public interest in eradicating corruption amongst public servants on whom the smooth administration and functioning of the State are dependent, whereas in private sector cases the interest is in upholding the public's legitimate expectations of a fair and commercially even-handed business climate, and in ensuring that the efficient operation of the market is not disrupted.

### *Appellant's sentence*

Applying the revised sentencing framework to the facts of the case, the High Court found both the individual and global sentences imposed on the appellant were manifestly inadequate. Among other things, the High Court considered that the shipyard had suffered significant and actual economic detriment, and rejected the appellant's contention that his offences were "victimless". The court also noted that other legitimate contractors were deprived of the opportunity to effectively compete for the jobs in question, which should be viewed as an increase in the harm caused by the appellant's conduct.

The High Court therefore substituted the sentences ordered by the District Judge in relation to the conspiracy charges with sentences derived under the revised sentencing framework, resulting in a significantly increased global sentence of 37 months and three weeks' imprisonment.

This was itself noteworthy, as the prosecution in this case had not appealed against the original sentence imposed by the court below. Indeed, the High Court took the opportunity to issue a stern reminder that accused persons who contemplate appealing against their sentences should bear in mind that the appeal court will consider enhancing sentences in plainly unmeritorious appeals, even if the prosecution does not cross-appeal.

## **Concluding Observations**

In recent years, the Singapore courts have increasingly formulated sentencing frameworks to be applied to various specific categories of offences at the sentencing stage. While this latest decision is likely to prove a welcome addition in promoting consistency in sentencing for private sector corruption offences, it also serves as a constructive reminder of the courts' continuing willingness to impose relatively severe custodial sentences to punish corrupt conduct, where this is merited by the specific circumstances of the wrongful conduct. Notably, this can be so even in cases where the public sector is not involved.

Companies and business operating in Singapore would be well-served by ensuring that they have in place effective business controls and anti-corruption protocols. Typically, these might include (but are not limited to) measures such as regular staff compliance training, established written policies on employee behaviour and dealings with business counterparties, and robust in-house compliance and audit systems. There are also anonymous whistle-blowing avenues to the authorities available to parties who find themselves at the receiving end of an unwanted corrupt overture.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:



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