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Book Review

THE LAW ON CORRUPTION IN SINGAPORE: CASES AND MATERIALS[1]

by Tan Boon Gin

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1 The second edition of *The Law on Corruption in Singapore: Cases and Materials* is a case and material book that succinctly provides in-depth commentary and analysis on the key principles on the law of corruption which are primarily consolidated in the Prevention of Corruption Act[2] ("PCA") and common law.

2 The second edition, laboriously written by Tan Boon Gin, is published under the *Monograph Series* by the Singapore Academy of Law. Its publication is timely: the book provides a welcome update on the law of corruption as we enter a new decade.

3 Rather than merely providing a compilation of the seminal cases pertaining to the law of corruption, the author sets out the various legal requirements pertaining to the Singaporean understanding of corruption and examines the same in each of the chapters.

4 In chapter 1, the author starts off with an elucidation of the corruption paradigm involving the "briber", the "recipient" and the "principal" to whom the "recipient" owes his duties. The "briber" is seeking to cause the "recipient" to act in the "briber's" interests, and against the interest of the "principal", in breach of the "recipient's" duty. This paradigm is enshrined in s 6 of the PCA. The author notes that s 5 of the PCA is not so constrained and must therefore deviate from the paradigm.

5 In chapters 2 to 4, the author provides analysis and commentary on the elements of the corruption offences and starts off with a much-needed restatement of the formulation of the two-step test for corruption, followed by a discussion on the distinction between "corrupt intent" and "guilty knowledge". Subsequently, the author discusses the principles in respect of "corrupt intent" and "guilty knowledge" and the myriad factual

1 Academy Publishing, 2nd Ed, 2021.
2 Cap 241, 1993 Rev Ed.

matrices in which "corrupt intent" and/or "guilty knowledge" may or may not have been made out. This is particularly useful as rightly noted in *Chan Wing Seng v Public Prosecutor*,[3] the factual permutations on the meaning of "corrupt" can be endless. Nonetheless, the author endeavours to discuss various factual matrices that have arisen in reported and unreported decisions. Such commentary includes, *inter alia*, discussions on:

(a) Payments made to encourage the discharge of existing duty, especially in the context of whether it is corrupt to reward a public servant for doing what he is supposed to do anyway.

(b) The interplay between s 5 of the PCA and s 57C of the Immigration Act[4] in respect of marriages of convenience, and the spate of cases involving the provision of sexual gratification in respect of the proving of a "corrupt intent".

(c) The difference in application between ss 5 and 6 of the PCA in respect of a corrupt transaction with a middleman as opposed to a public servant directly.

(d) The fact that a breach of certain rules and/or codes does not, *ipso facto*, amount to corruption *per se*, but would allow the court to easily infer guilty knowledge.

6 In chapter 5, the author provides extracts and explanations on the definitions of various words and phrases including "corruptly receiving", "in conjunction with", "in relation to principal's affairs or business", "being an agent", "any matter or transaction whatsoever", and "any gratification as an inducement or reward". These phrases are important as they appear in the provisions of the PCA and it is essential that practitioners are aware of the same.

7 In chapter 6, which relates to statutory presumptions, the author discusses ss 8, 9 and 24 of the PCA:

(a) Section 8 of the PCA provides for the presumption of corruption if gratification was given to a person employed by the Government or a public body. Notably, the author examines the alleged "sex-for-grades" case of *Tey Tsun Hang v Public Prosecutor*[5] which provides judicial guidance on when a body is considered a "public body".

(b) Section 9 of the PCA states that where the acceptor or giver of gratification is charged under s 6(*a*) or 6(*b*) of the

3 [1997] 1 SLR(R) 721 at [26].
4 Cap 133, 2008 Rev Ed.
5 [2014] 2 SLR 1189.

PCA, he is presumed to be guilty notwithstanding that no favour was actually shown, or that there was no intention or ability to perform such favour. The author notes that nevertheless, these factors still remain relevant evidential considerations as to whether the offender is guilty in fact. To that end, the author cites cases involving acquittals of the recipients who were unable to show favour.

(c) Section 24 of the PCA allows the Prosecution to corroborate witness testimony of corruption by virtue of the alleged recipient's unexplained wealth. The author helpfully explains the wide scope of this presumption: it is not confined to corroborating the evidence of the giver, but can also corroborate evidence from other sources.

8 Apart from substantive law, the author also provides his views on the operation of the substantive law of corruption and criminal procedure.

9 In chapter 7, the discussion revolves around the operation of s 27 of the PCA, which provides a legal obligation to give information to investigators. The author seeks to reconcile this provision with s 22 of the Criminal Procedure Code[6] ("CPC"), which provides for the recording of statements from witnesses and grants the privilege against self-incrimination.

10 This dichotomy is of importance because investigations in respect of corruption-related matters (which will rely on s 27 of the PCA for the purposes of investigations) may eventually lead to prosecution of non-corruption offences (in which the law enforcement officers rely on s 22 of the CPC for the purposes of investigations). Such issues may arise when accused persons are informed that they are bound to state the truth pursuant to s 27 of the PCA (when they had intended to remain silent), only to eventually be charged with non-PCA offences.

11 Further, allegations of threats, inducements, promises and oppression that may arise will add an additional layer of confusion for offenders of non-PCA related offences whose statements were recorded under the regime of s 27 of the PCA.

12 The contradiction was finally resolved with the October 2018 introduction of s 258(4A) of the CPC which states that a statement shall not be deemed to be caused by threat, inducement or promise simply because the recorder has informed the accused that he was legally bound

6 Cap 68, 2012 Rev Ed.

to give information under s 27 of the PCA, if the recorder believed, in good faith, that the accused was concerned in an offence under the PCA or there was reasonable basis to believe that the accused was concerned in an offence under the PCA.

13 In chapter 8, the author provides insight on s 36 of the PCA under which informants and certain witnesses are given special protection. The author considers the restrictions in this provision against the common-law entitlement to the first information report, as well as applications pursuant to s 235 of the CPC, which allows the court to order the production of documents.

14 In addition, the author considers the interaction between s 25 of the PCA and illustration (*b*) of s 116 of the Evidence Act.[7] Section 25 of the PCA provides a presumption of the credibility of accomplices while illustration (*b*) of s 116 of the Evidence Act permits the court to presume that an accomplice is unworthy of credit. These statutory provisions appear to be contradictory as they provide for the presumption of the credibility (or lack thereof) of accomplices and the author provides an answer as to how these provisions are reconcilable.

15 In chapter 9, the author provides his views on other provisions of the PCA, namely:

(a) Section 13 of the PCA which provides for the forfeiture of proceeds of crime. In particular, it is a mechanism to disgorge the illicit benefits of corruption. The author sets out an assortment of cases that provide guidance on the functions and limits of this provision when faced with fact patterns that are out of the ordinary. One such case is that of *Public Prosecutor v Marzuki bin Ahmad*[8] where the court held that gratification in the form of a loan must be treated differently in the context of s 13 of the PCA.

(b) Section 6(*c*) of the PCA which criminalises corrupt transactions in respect of agents using false documents to deceive their principals. The author comments significantly on the case of *Ong Beng Leong v Public Prosecutor*[9] in which the operative word of "use" is discussed extensively and it was held that the charge is made out so long as the false document was employed to mislead the principal.

(c) Section 26 of the PCA which criminalises obstruction of searches. Notably, as Corrupt Practices Investigation Bureau

7 Cap 97, 1997 Rev Ed.
8 [2014] 4 SLR 623.
9 [2005] 1 SLR(R) 766.

("CPIB") officers can be empowered to investigate non-PCA offences pursuant to s 19 of the PCA, the scope of s 26 of the PCA can extend to obstruction *vis-à-vis* non-PCA offences that are disclosed during investigations pertaining to corruption.

(d) Section 31 of the PCA which provides for the aspects of conspiracy within the PCA. Importantly, this provision punishes participants who conspire to commit a corruption offence that has not been actually carried out, as though the corruption offence had actually been committed.

(e) Section 33 of the PCA which provides for the precondition of obtaining consent to prosecute from the Public Prosecutor. This is crucial as practitioners should take note of whether proper consent has been obtained and an absence of the same may stifle prosecutions.

(f) Section 34 of the PCA which states that the District Courts have the jurisdiction to try corruption offences and to award the full punishment for that offence. This is a key provision as it serves as an exception to the ordinary sentencing powers of the District Courts.

(g) Section 37 of the PCA which allows Singapore citizens to be tried for committing corruption offences outside of Singapore. The author observes that despite the extraterritorial nature of this provision, it is not *ultra vires* and is also not inconsistent with the Constitution of the Republic of Singapore.[10]

16 Finally, in chapter 10, the author provides an evaluation of the laws pertaining to the seizure of property pursuant to the CPC and the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act[11] ("CDSA"). This distinction is important as different procedures apply to seizure pursuant to the CPC and to the CDSA and it is particularly useful to practitioners to note the difference.

17 In conclusion, this second edition provides an informative summary and update of the law of corruption locally and is a welcome addition to any practitioner's library and of use to anyone who wants to have a better understanding of this area of law. It is no surprise that Singapore has ranked very highly in the anti-corruption index, not only within ASEAN, but also on a global scale. In fact, Singapore ranks third in 180 countries with its high score of 85/100 which was awarded for the

10 1985 Rev Ed, 1999 Reprint.
11 Cap 65A, 2000 Rev Ed.

year of 2020 by the Corruption Perceptions Index.[12] This is mostly due to the strict anti-corruption laws of Singapore coupled with effective and robust enforcement of the very tough anti-bribery laws that have been put together in Singapore.

18 Kudos to the author for persevering during the COVID-19 lockdown to keep working on the previous edition to keep it up to date and to serve its purpose to the general public.

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12 <www.transparency.org/en/countries/singapore> (accessed 8 March 2021).