

# Give public servants valuable gifts? You could run afoul of the law

Experts cite risk of abetment through conflict of interest

Wong Shiying  
and Christine Tan

Former transport minister S. Iswaran pleaded guilty to obtaining various valuable items, was convicted and could face a jail sentence, in a case of significance for public servants and their dealings with external parties.

Legal experts say his sentencing on Oct 3, under a law not applied since the nation's independence, will set a precedent for future cases.

The 62-year-old on Sept 24 admitted to obtaining valuable items worth more than \$400,000 in total from Formula One race promoter Singapore GP's chairman, Mr Ong Beng Seng, and Mr David Lum Kok Seng, managing director of main-board-listed construction company Lum Chang Holdings.

The offences fall under Section 165, which makes it an offence for a public servant to accept anything of value from any person with whom they are involved in an official capacity without payment or with inadequate payment.

He also admitted to one charge of obstructing the course of justice. Another 30 charges under Section 165 will be taken into consideration for the sentencing.

Assistant Professor Benny Tan, who teaches law at NUS, said a gift-giver could be charged with abetment.

"In Singapore, an individual can abet in three ways – by instigating, being in a conspiracy, and by aiding," he said.

"Hypothetically, if the prosecution has evidence that Mr Ong instigated Iswaran to obtain a gift, Mr Ong may be liable for the offence of abetment by instigation to commit a Section 165 offence," he added.

The Attorney-General's Chambers (AGC) has said it will take a decision in respect of Mr Ong soon. The 78-year-old was named in several of the charges that Iswaran faced.

Mr Ong and Mr Lum have not been charged with any offence.

Lawyer Sunil Sudheesan, who heads Quahe Woo & Palmer's criminal law department, said the law can also be extended to the prosecution witnesses. The prosecution had lined up 56 witnesses for the Iswaran case, which was slated to go to trial.



Former transport minister S. Iswaran leaving the Supreme Court on Sept 24. Legal experts say his sentencing will set a precedent for future cases. ST FILE PHOTO

**Q** What are the differences pertaining to giving under Section 165 and the Prevention of Corruption Act (PCA)?

**A** Of Iswaran's 35 charges, he initially faced two counts of corruption, but these charges were amended to offences under Section 165.

SMU Associate Professor Eugene Tan, another law expert, said under the PCA, which applies to the public and private sectors, the giving and receiving of a bribe are penalised.

"The briber and bribee can be charged for a substantive corruption offence where a favour for a favour was effectively the transaction," he said.

In contrast, Mr Sudheesan said, gift-givers are not automatically implicated under Section 165.

Their criminality depends on whether they gave with an intention to corrupt, or if they gave out of pure friendship, with no ulterior motives, he said.

Prof Eugene Tan said that a common ingredient in PCA and Section 165 is that there is a conflict of interest.

He said: "In a PCA offence, there is actual conflict of interest. For Section 165, it is more likely a case of potential or apparent conflict of interest."

"All types of conflict of interest are best avoided. Even if there are no criminal consequences, a conflict of interest situation raises legitimate ethical questions for both giver and receiver."

**Q** What are the wider implications of the case?

**A** Prof Eugene Tan said that while offences under Section 165 are not "full-blown corruption offences", he sees them as "corruption-type

offences".

"It is an extremely useful provision as part of Singapore's suite of anti-corruption measures," he added.

Prof Benny Tan agreed, and said the case makes clear the rules when it comes to receiving gifts as a public servant.

"Before this case, some may have had the impression that it's a crime to receive gifts only if there was corrupt intent," he said.

"This case highlights that a public servant can commit an offence when he or she accepts a gift, even without corrupt intent or knowledge," he added.

Mr Sudheesan said that if civil servants are in doubt about any business relationship, they should declare it.

"Rules for civil servants are always very clear. People may know the rules, but they don't know about the law. But (with Iswaran's case), who doesn't know now?" he added.

Beyond the public service, Associate Professor Soh Kee Hean, who teaches criminal investigation, public safety and security at the Singapore University of Social Sciences, said the case will send a firm message to the business and international community at large.

"Singapore deals with public service misconduct very strictly. There is zero tolerance for any corruption, or corruption-related misconduct," he added.

**Q** Will the rules for public servants around gifts be rewritten?

**A** Prof Soh, a former director of the Corrupt Practices Investigation Bureau, said Iswaran's conviction sends a strong signal to the public service that government officials

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must observe "a high standard of conduct" when they are offered gifts and hospitality.

"Iswaran's case shows the Government intends to uphold these standards and is prepared to prosecute those who accept gifts without due consideration, even if the individual is a minister," he said.

Prof Soh added that if public servants have no choice but to accept the gift, they should declare it promptly for the avoidance of doubt.

Under Singapore's public service rules on gifts, civil servants cannot retain gifts worth more than \$50, unless they pay the market value of the gift to the Government.

Political office-holders adopt "similar spirit and principles" in their official activities, Minister-in-charge of Public Service Chan Chun Sing said in Parliament in August 2023. He added that there are specific rules spelt out in the code of conduct for ministers.

Prof Eugene Tan said Iswaran's case makes clear that public servants should be very wary of anyone – with whom they have official dealings – who comes bearing gifts.

"It reiterates that they have to exercise utmost scruples in ensuring they are not placed in a position of conflict of interest," he said.

However, Mr Chan, in his speech in Parliament, urged against a "knee-jerk reaction" to immediately tighten or add more rules.

He said the rules should be updated only if they are too lax, or if the case involves a new situation not covered by the rules.

Mr Chan added that if the rules are unclear, they should be clarified and simplified.

A judgment call will still be required for some matters, he said, adding: "Our officers should not just understand the letter of the rule, but also the spirit."

**Q** What's next for the prosecution witnesses?

**A** The prosecution's witnesses include Mr Lum, Mr Ong and his wife, prominent businesswoman Christina Ong, and Iswaran's wife, Ms Kay Mary Taylor. The others include Iswaran's former personal as-

sistant Ivy Chan Wan Hiang; deputy chairman of Singapore GP Colin Syn Wai Hung; and Singapore GP director Mok Chee Liang.

ST asked the AGC about Mr Lum and Mr Ong. It only said it would take a decision in respect of Mr Ong soon.

Mr Sudheesan said if any of the witnesses were involved in gift-giving, they will be investigated.

"As long as they were involved in the giving of the gifts, they will be investigated. Involvement includes those instrumental in the delivering of the gifts and their levels of knowledge of the purpose behind the gifts," he added.

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