

## Client Alert

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## Crossing the Line with the Crossover Project: Pastor and Co-Accused Found Guilty Following Epic Trial

On 21 October 2015, following a trial that spanned almost three years, six church leaders of City Harvest Church ("**CHC**") were found guilty of 43 charges of conspiring to commit criminal breach of trust ("**CBT**") and the falsification of accounts.<sup>1</sup> The charges involved various "sham" bond investments, "round-tripping" transactions and the falsification of accounts.

Among the co-accused, Senior Pastor Kong Hee ("**Kong Hee**") received the heftiest sentence of 8 years' imprisonment. Former fund manager Chew Eng Han ("**Eng Han**"), Deputy Senior Pastor Tan Ye Peng ("**Ye Peng**") and former finance manager Serina Wee ("**Serina**") received custodial sentences of 6 years, 5½ years and 5 years respectively. Former finance committee member John Lam ("**Lam**") was given a 3-year custodial sentence while former CHC finance manager Sharon Tan ("**Sharon**") received the lightest sentence of 21 months' imprisonment.

The co-accused have been given two weeks to file their respective notices of appeal (if minded to do so). In the meantime, bail has also been extended to 11 January 2016. The prosecution has since filed notices of appeal against the sentences imposed on the basis that the sentences are manifestly inadequate.

### Facts

CHC is one of Singapore's "mega-churches". It subscribes to a "cultural mandate" as its key evangelistic tool. It incorporated Xtron Production Pte Ltd ("**Xtron**") for the sole purpose of managing the music career of Ho Yeow Sun ("**Sun Ho**"), the wife of Kong Hee and the ambassador for the "Crossover Project" (the "**Crossover Project**"). As early as 2002, Sun Ho released her first set of music albums in Asia for the Crossover Project, with future plans to expand the project into the American popular music market. The launch of the US albums was, however, delayed for various reasons, and interrupted by raids conducted by the Commercial Affairs Department ("**CAD**") in May 2010.

Under CAD's investigations, it transpired that CHC had spent S\$24 million on music production costs for Sun Ho's planned US albums. The monies were withdrawn from CHC's Building Fund (the "**BF**"), a restricted fund set up in 1997 to receive donations for building-related purposes, and paid to Xtron and an Indonesian glassware company ("**Firna**") in the guise of purchasing bonds issued by these two companies. Further investigations revealed that CHC had placed a further S\$11.4 million into two tranches of an investment fund and

<sup>1</sup> *Public Prosecutor v Lam Leng Hung and others* (District Arrest Case No 23148 of 2012 and others)

paid Xtron another S\$15.24 million pursuant to an advanced rental licence agreement. These monies were eventually returned to the church by the end of 2009 through a series of "round-tripping" transactions.

The prosecution's case was that the bonds investments were mere pretences for directing the BF money towards the production of Sun Ho's music career. It also alleged that "round-tripping" transactions were for the purpose of creating the false appearance that Firna was redeeming the bonds. These allegations culminated into two broad groups of charges:

- the first group being in relation to the "sham" investments; and
- the second group being in relation to the "round-tripping" transactions.

The prosecution also brought a third group of charges against Sharon, Eng Han, Ye Peng and Serina concerning the falsification of accounting entries in CHC's books made in respect of the "round-tripping" transactions.

## Key Issues

### ***Criminal Breach of Trust***

In order to establish a CBT charge under Section 405 of the Penal Code (Cap. 224), the court was concerned whether the accused:

- were entrusted with property;
- had committed a "wrong use" of the property; and
- had in their conduct acted with "dishonest intent".

### ***Falsification of Accounts***

Additionally, in relation to the falsification of accounts charges under Section 477A of the Penal Code (Cap. 224), the court was concerned with whether:

- the entries in CHC's accounts were false;
- the accused had engaged in a conspiracy for doing something that amounted to making a false entry in CHC's accounts; and
- the accused had each acted with intent to defraud.

## Decision

### ***CBT charges: Whether the Xtron bonds were "sham" investments***

It is undisputed that S\$13 million was applied towards the Crossover Project using CHC's BF. The court readily found that Kong Hee, Ye Peng and Lam were each entrusted with dominion over the BF as agents of CHC in the course of their business as the board of directors. It was also satisfied that Eng Han and Serina had played a substantial role in executing the plans to channel the BF through Xtron for the Crossover Project.

Further, the court was satisfied that the accused persons, with the exception of Sharon, had committed the BF to "wrong use". It found that the use of the BF for "mission" purposes did not fall within the legitimate scope which the BF could be used for; the BF was neither used for land-and-building-related expenses nor for "investments" to generate returns.

Finally, the court found the claim, that the co-accused genuinely believed that the Xtron bonds would bring CHC financial returns, to be contrived. This was because the co-accused had knowledge that the Xtron bonds were not for financial returns but were conceived first and foremost to support the Crossover Project. It therefore cannot be said that the co-accused had any honest grounds for their claims that the BF was a genuine case of investment.

The CBT charges for the Xtron bonds investments were accordingly made out against the accused, with the exception of Sharon.

### ***CBT charges: Whether the Firna bonds were "sham" investments***

It is also undisputed that CHC had transferred S\$11 million from CHC's BF for the purposes of the Crossover Project. As elucidated above, the court was satisfied that besides Sharon, the other co-accused had misused CHC's BF which they had dominion over. The court found that the co-accused could not have any "honest" intent for the Firna bonds investment given that they had knowledge that the financial returns under the Firna bonds would not actually come from the profits of Firna's glass factory business. Accordingly, the court was satisfied that Kong, Ye Peng, Eng Han, Serina and Lam are guilty of the charges of CBT for causing CHC to subscribe to the Firna Bonds.

### ***CBT charges: The "Round-tripping" transactions***

It is undisputed that CHC had made further payments of S\$11.4 million and S\$15.24 million for the "round-tripping" transactions. The court found that these transactions were made to create the appearance of genuine transactions involving the redemption of bonds when they were actually not. Instead, these transactions were controlled by the four accused to channel money through various conduits in order for CHC to pay itself. The failure of the accused to make full and frank disclosures to the lawyers and auditors of CHC was telling of their knowledge that they were not legally entitled to cause CHC to enter into those transactions. The charges of CBT were therefore made out against Ye Peng, Eng Han, Serina and Sharon for the "round-tripping" transactions.

### ***Falsification of Accounts***

The court was satisfied that the accounts for the "round-tripping" transactions were false given that the entry recording a redemption of Xtron bonds in the form of a set-off against the advanced rental licence agreement was not a case of CHC and Xtron making independent decisions to pay the rental on one hand and redeem bonds on the other. They had knowledge of the false accounting entries and had intent to defraud. The elements for the charges of falsification of accounts were therefore made out, and the four accused were guilty on all counts of falsification of CHC's accounts.

## **Comment**

This judgment serves as a stern warning and cautionary reminder to any individual, whether serving in the capacity of a banker, merchant or an agent, to avoid carrying out their duties under a "cloak of invisibility" to evade accountability. It advocates the importance of transparency in corporate governance as well as the necessity of having sufficient checks and balances to ensure the integrity of management. It also illustrates the severe criminal sanctions that accompany dishonest and undiscerning management exercised under a cloud of secrecy.

Much has been argued in the course of the trial, and accepted by the court, that the co-accused do love CHC and would not act in any way contrary to the interests of the church. Such genuine motives and beliefs that the church funds were to be used for the purported evangelistic purpose would, however, not exonerate the co-accused. This is because the intention of an individual is distinct from his motives in law; an individual may intend to cause wrongful loss or to obtain wrongful gain with the most laudable motives. Therefore, no matter how pure one's motives are or how ingrained one's trust is in his leader, it would not exonerate him from criminal liability if the elements of a crime, such as the criminal breach of trust, are made out.