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## Press Releases

### CFA upholds MIPO convictions of ex-Chief Secretary and three others

2017-6-14

The Court of Final Appeal (CFA) today (June 14) unanimously upheld the convictions of a former Chief Secretary for Administration (CS), two former senior members of a listed company and a businessman on one count of conspiracy to commit misconduct in public office (MIPO).

The appellants were Hui Rafael Junior, also known as Rafael Hui Si-yan, 69, former CS; Thomas Kwok Ping-kwong, 65, former joint Chairman of listed Sun Hung Kai Properties Limited (SHKP); Thomas Chan Kui-yuen, 70, former Executive Director of SHKP; and Francis Kwan Hung-sang, 66, businessman.

Kwok, who was earlier granted bail while pending his appeal, was immediately sent to jail to serve his remaining prison term following the CFA ruling.

The appeals of Hui, Kwok, Chan and Kwan were heard by Geoffrey Ma Tao-li, Chief Justice of the CFA; Joseph Paul Fok Shiu-kong, Permanent Judge of the CFA; Patrick Chan Siu-oi, Frank Stock and Murray Gleeson, all Non-Permanent Judges of the CFA, on May 9 and 10, 2017.

In handing down a judgment today, the CFA said Hui was the second most senior officer in the Government of the Hong Kong Special Administrative Region. Being part of the Executive Council, he played an important role in the development of government policy. He was privy to highly confidential information, in relation to matters in which SHKP had substantial interests.

The CFA added that the conspiratorial agreement concerned Hui being paid HK\$8.5 million in return for his favourable disposition while in the office of CS. This bargain was therefore clearly corrupt. Its purpose was to cause the anticipated CS to be inclined to show favour to the other conspirators' interests. Once he had accepted the HK\$8.5 million in relation to his holding the office of CS, his independence when he assumed office would be hopelessly compromised and he could not properly discharge his duties nor be trusted to do so.

In addressing a line of argument raised by the appellants during appeal, the CFA stated that the abuse of public trust contemplated by the conspirators was clear and, by agreeing to place himself in such a compromised state, Hui made an agreement which contemplated a continuing act of misconduct whilst he was CS. The fact that the payment made to induce that compromised state was made before he assumed his public office did not mean the abuse of trust occurred at the time of the making of the payment. That payment was made to secure an ongoing inclination on the part of Hui towards SHKP once he assumed

the office of CS and it was by agreeing to act as CS whilst in the “golden fetters” constituted by that payment that he conspired to commit an act of misconduct sufficient to satisfy the conduct element of the offence of MIPO.

On December 19, 2014, Hui, Kwok, Chan and Kwan were variously found guilty of a total of five charges – three of MIPO, contrary to common law; one of conspiracy to commit MIPO, contrary to common law and Section 159A of the Crimes Ordinance; and one of conspiracy to offer an advantage to a public servant, contrary to Section 4(1)(a) of the Prevention of Bribery Ordinance and Section 159A of the Crimes Ordinance.

Four days later, Hui received a jail term of seven and a half years, while Chan was sentenced to six years’ imprisonment. Kwok and Kwan were each jailed for five years.

The appellants then appealed against their convictions on the five charges, but the appeals were subsequently dismissed by the Court of Appeal (CA). Chan’s separate appeal against sentence was allowed, but his total jail term remained the same at six years.

The CA later handed down a judgment granting a certificate to appeal to the CFA in relation to the charge of conspiracy to commit MIPO for the reason that points of law of great and general importance were involved. On July 12, 2016, the Appeal Committee of the CFA granted them the leave for appeal in relation to that charge only, and granted Kwok bail.

The charge stated that Hui, Kwok, Chan and Kwan conspired together between March 1, 2005 and June 30, 2007 for Hui to wilfully misconduct himself in the course of his public office, namely the CS, by remaining favourably disposed to SHKP, its subsidiaries or associated companies, Kwok, another joint Chairman of SHKP and/or Chan in return for a sum of HK\$8.5 million through a series of payments from Kwok, the joint Chairman of SHKP, Chan and Kwan.

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## 新聞公佈

# 終審法院駁回前政務司司長及另外三人上訴維持串謀行為失當罪名成立

2017年6月14日

終審法院五名法官今日(六月十四日)一致駁回一名前政務司司長、一間香港上市公司兩名前高層人員及一名商人的上訴，維持四人一項串謀藉公職作出不當行為罪名成立。

上訴人為許仕仁，六十九歲，前政務司司長；郭炳江，六十五歲，上市公司新鴻基地產發展有限公司(新鴻基地產)前聯席主席；陳鉅源，七十歲，新鴻基地產前執行董事；及關雄生，六十六歲，商人。

郭炳江早前獲准保釋以待上訴。他於終審法院宣佈裁決後，即時被送入監獄服餘下的刑期。

許仕仁、郭炳江、陳鉅源及關雄生的上訴於本年五月九日及十日由終審法院首席法官馬道立、終審法院常任法官霍兆剛、以及終審法院非常任法官陳兆愷、司徒敬及紀立信審理。

終審法院今日頒下判詞，指許仕仁案發時是香港特區政府的第二號人物。他也是行政會議成員，在政府的政策發展中扮演著重要角色。他掌握高度機密的資料，當中涉及與新鴻基地產有著重大利益關係的事情。

終審法院又指本案的串謀協議關乎許仕仁收取八百五十萬港元，以換取他身為政務司司長期間對有關人士持有優待傾向。此項交易明顯屬貪污舞弊，其目的是促使即將就任的政務司司長傾向惠及及其他串謀者的利益。許仕仁一旦收取了與其擔任政務司司長一職有關的款項八百五十萬港元，他在就職期間的獨立性將徹底被削弱，他將無法恰當地履行其公職，亦無法獲得信任可如此履行職務。

就上訴人於上訴期間提出的一項理據，終審法院指濫用公眾信任是串謀者所預期的，這是非常明顯。當許仕仁願意處身於如此妥協境地時，他已是作出了一項協議，預期自己在身為政務司司長期間將持續作出不當行為。誘使許仕仁處身於如此妥協境地的款項是在他出任公職之前支付，但這並不代表濫用公眾信任發生於支付款項當時。支付款項的目的，是要確保許仕仁從就職政務司司長開始，將持續傾向於優待新鴻基地產。當許仕仁同意在身陷該筆款項造成的「黃金枷鎖」的同時執行政務司司長職務，已屬串謀作出不當行為，足以構成藉公職作出不當行為罪行中的行為元素。

許仕仁、郭炳江、陳鉅源及關雄生於二〇一四年十二月十九日被陪審團裁定共五項罪名成立，即三項藉公職作出不當行為，違反普通法；一項串謀藉公職作出不當行為，違反普通法及《刑事罪行條例》第159A條；及一項串謀向公職人員提供利益，違反《防止賄賂條例》第4(1)(a)條及《刑事罪行條例》第159A條。

許仕仁於四日後被判囚七年半，而陳鉅源被判入獄六年。郭炳江及關雄生則各被判監五年。

他們四人其後就該五項定罪向上訴法庭提出上訴，遭全部駁回。陳鉅源就刑期提出的上訴得直，但總刑期不變維持監禁六年。

上訴法庭其後頒下判詞，由於該項串謀藉公職作出不當行為控罪涉及具重大而廣泛重要性的法律論點，批出上訴至終審法院的許可。終審法院上訴委員會於二〇一六年七月十二日只就該項控罪批出有關上訴許可，並批准郭炳江保釋等候上訴。

有關控罪指許仕仁、郭炳江、陳鉅源及關雄生於二〇〇五年三月一日至二〇〇七年六月三十日期間，串謀使許仕仁履行政務司司長的公職過程中故意作出不當行為，即保持傾向優待新鴻基地產、其附屬或聯營公司、郭炳江、另一名新鴻基地產聯席主席及/或陳鉅源，以換取多筆透過郭炳江、該新鴻基地產聯席主席、陳鉅源及關雄生支付的八百五十萬港元款項。

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