

## **EXECUTIVE SUMMARY**

### **Possibility of securing guilty pleas in exchange for reduced charges**

This article explains in detail what a plea bargain is and how it works.

The practice of plea bargaining is common in Singapore and may generally occur once an accused is charged. The outcome of any plea bargain depends on various factors, including public interest, timing of the guilty pleas and so on. It is important to note that while a guilty plea saves public resources, a plea bargain is not a given.

## **Will pleading guilty lead to reduced charges? Consult with the prosecution.**

One idyllic night, Ah Wang went to a nightclub with the intent of having a good time and indulged in beers, spirits and red wine. Thereafter, Ah Wang drove home by himself in the wee hours and accidentally crashed into another car on the way, resulting in one death and injuries to two persons.

Several months later, Ah Wang was charged in court for one count each of drink driving and causing death by negligent driving, and two counts of causing grievous hurt by negligent driving. He wanted to plead guilty, but was afraid of a long jail term. Hence, he requested that his lawyer "bargain" with the prosecution on his behalf, hoping to plead guilty only after getting a "good deal".

In fact, this so-called bargaining is known as a "plea bargain" in the criminal justice process. If the accused pleads guilty, there may be a chance of him getting a lighter sentence.

In this issue of "Know the Law", Mr. Hon Yi, Deputy Senior State Counsel (Technology Crime, Crime Division), and Mr. Yang Ziliang, Deputy Senior State Counsel (Homicide, Crime Division), of the Attorney-General's Chambers (AGC) explain the plea bargaining process.

---

A plea bargain refers to an agreement between the prosecution and the accused. If the accused pleads guilty instead of claiming trial, AGC may exercise discretion to charge the accused under a less serious charge, or reduce the number of charges. In other words, the accused has a better chance of receiving a lighter punishment than if he were to claim trial and be convicted.

For example, if Ah Wang, who was involved in the drink-driving accident, had chosen to claim trial, the prosecution might proceed with the trial on all four charges. However, if he had promptly indicated that he would plead guilty, the prosecution might only proceed on two of the charges, with the remaining two left for the judge to take into consideration during sentencing.

Mr. Hon said that although the practice of plea bargaining is not explicitly stated in any statute or the Criminal Procedure Code, it is a common practice that Singapore has adopted from the United Kingdom. Once the accused is charged, he can represent himself in person, or through a lawyer, and approach AGC to begin negotiations.

Mr. Yang pointed out that another form of plea bargaining may occur when the prosecution has already established a clear position before the accused is charged. On the day of the charging, the prosecution will directly inform the accused of the number of charges that will be proceeded against him should he plead guilty, thereby eliminating the need for a representation process.

Mr. Hon added that this generally happens when facts of the case, evidence, and mitigating factors are very clear, hence the prosecution can quickly reach a decision.

**Guilty plea saves resources, but a plea bargain is not a given**

The prosecution's willingness to negotiate with the accused is largely dependent on the public interest factor. However, plea bargain is not a given.

Mr. Yang raised the example of a sexual assault case which involves a child victim. If the accused is willing to plead guilty, it will spare the child victim the trauma of having to give testimony and be cross-examined in court. The accused's guilty plea will also allow the case to be concluded earlier, ensure the accused is punished, and save both the prosecution and the courts resources.

"If there are many contested areas, both the prosecution and the defence will have to spend a lot of time preparing for the trial and going through the actual trial. On the other hand, if the accused is willing to plead guilty, it may take as little as half an hour to conclude the court session.

For the accused, if he is truly remorseful, pleading guilty as early as possible also allows for faster closure of the matter.

Mr. Hon said that informing the accused about the prosecution's position also helps the accused in deciding his next course of action. For example, if the prosecution only intends to request that the courts impose a fine but does not inform the accused of this position, the accused may choose to claim trial because he does not want to go to jail. If the accused knew from the beginning that the prosecution is only seeking a fine, he might have opted to plead guilty.

However, the prosecution does not always reach a plea bargain with the accused. For example, when it is necessary to sentence a recalcitrant molester to a longer jail term so as to protect the community. In such cases, the prosecution will not agree to reduce the accused person's charges.

Mr. Yang emphasised that the prosecution will not keep reducing charges in exchange for the accused's guilty plea as they have to ensure that the accused receives a fair sentence.

### **Timing of guilty pleas affects "deals" received during negotiation**

Opportunity does not knock twice.

From the court's perspective, if the accused pleads guilty soon after being charged, it indicates remorse on his part and also does not waste the prosecution's and courts' resources. Therefore, the accused may be given a lighter sentence. However if the accused changes his mind later, it will be a different matter altogether.

Mr. Yang said, "If the accused changes his mind after indicating that he will plead guilty, this suggests that he is not remorseful. The prosecution and the court would begin to expend resources in preparation for the trial. Thus, once the accused changes his mind, the original plea bargain offer will lapse."

If the accused changes his mind again and wishes to plead guilty before the commencement of the trial, the new "deal" will be different. To illustrate this example, Mr. Yang explained that the prosecution may initially be willing to proceed on three out of ten charges against the accused. Under the new "deal", the prosecution may want to proceed on four out of ten charges against the accused.

In addition, the timing of accused's guilty plea also affects the terms of the plea bargain offered by the prosecution.

Mr. Hon clarified, "If an accused decides to plead guilty after initially claiming trial, the prosecution may or may not agree to a plea bargain. Even if the prosecution decides to offer a plea bargain, the terms are unlikely to be as attractive as the ones made soon after an accused is charged."

### **Case study**

#### ***Former insurance agent charged with fraud, case dragged on for five years due to her repeated changes in position***

A former top insurance agent, Sally Low, who cheated her clients close to \$9 million, was finally sentenced after her case dragged on for five years. After Sally Low was charged in 2011, she pleaded guilty. Later, she changed her mind to claim trial, resulting in the prosecution retracting the initial plea bargain offered to her.

Sally Low (42) was formerly a top insurance agent with AIA. Between 2002 and 2008, she cheated an Indonesian couple a total of about \$8.89 million and was sentenced in 2016 to eight years' imprisonment.

#### ***Judge: Prosecution's submission for heavier sentence is understandable***

In 2011, Sally Low faced 21 charges, including cheating, transfer of criminal proceeds, forgery, and theft.

When she first pleaded guilty in December 2013, she reached an agreement with the prosecution. The prosecution offered to proceed on four of the charges, with the remainder to be taken into consideration for sentencing by the judge, and sought an imprisonment term of about seven years.

However, after pleading guilty, Sally Low claimed that she was innocent, and hence the courts rejected her guilty plea in June 2014. The trial began in May 2016, but on the third day of the trial, Sally Low pleaded guilty again. This time, the prosecution asked her to admit to five of the charges and urged the courts to sentence her to a jail term of at least nine years.

Sally Low's lawyer argued that the terms of the first plea bargain by the prosecution were more reasonable.

In his judgement, the judge described that the "ship had sailed" when Sally Low chose to retract her guilty plea. Consequentially, that plea bargain would also have lapsed. Sally Low also changed her lawyers several times, resulting in rescheduling of the trial dates, a waste of judicial resources and inconvenience to the victims. Therefore, it was understandable why the prosecution submitted for a heavier sentence when she pleaded guilty for the second time.