

## Supreme Prosecutors Office News Release



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On April 30, 2013 the Taipei District Court of Taiwan issued its first instance judgment (Jin-Su-47 of Year 2012) in the matter of Lin Yi-shi's violation of the Anti-Corruption Act. After receiving the original Judgment on May 15, 2013, Prosecutor-General Huang Shih-ming personally convened a meeting of the Special Investigation Division ("SID") and prosecutors of the Taipei District Prosecutors Office ("TDPO") on May 20 to discuss the Judgment. It was confirmed that appeals should be lodged in respect of all parts of the Judgment, other than the findings that the defendant Lin Yi-shi was guilty of having unknown source of property, and that the defendant Shen ○-lan was guilty of fraudulent infringement of a debt claim. The SID prosecutors prepared a set of Comments on Appeal (totaling 70 pages) today (May 21), and requested that the TDPO prosecutors appeal against said Judgment according to law. Below are explanations regarding the SID's Comments on Appeal:

### **I. Procedural Part:**

**The original Judgment held that the two CDs labeled respectively "A" and "B" that were voluntarily submitted by Chen ○-Hsiang to the prosecutor at the June 30, 2012 hearing, and the transcript from the Court's examination of the magnetic audio recording contained in these two CDs on January 16, 2012 (that is the portion remaining after removing the "black deletion lines" in Attachment 1 to the original Judgment), have lost their authenticity and lack evidentiary power because Chen ○-Hsiang and Cheng ○-mei had cut the recordings without authorization. However, such finding is contrary to the rules of evidence, and the Judgment has clearly erred for failing to apply to law.**

### **II. Substantive Part:**

**1. The original Judgment altered the legal ground of indictment, and held that**

**the defendant Lin Yi-shi had committed the offense of using powers and opportunities in the course of duty to obtain enrichment by blackmail. Clearly the Judgment has erred for failing to apply the law, applying inappropriate laws, lacking reasons, having conflicting reasons, and failing to thoroughly investigate the evidence.**

- (1) The original Judgment held that the defendant Lin Yi-shi had committed the offense of blackmail for enrichment by powers and opportunities “in the course of duty”, but then found that it was “not” an act “in the course of duty” for the purposes of the offense of bribery. Its judgment reasons are clearly conflicting.
- (2) The original Judgment held that the doctrine of substantive influence should be adopted for “acts in the course of duty” for the offense of bribery, but then varied its standards of finding according to “personal satisfaction of consideration matter type” and “non-personal satisfaction of consideration matter type”. Such variation not only lacks basis in legal reasoning, but is also erroneous for being a judgment that applies inappropriate laws.
- (3) The original Judgment neglected to find that pursuant to Article 3, Paragraph 3 of the Act Governing the Management of State-Owned Enterprise, a member of the Legislative Yuan also has powers of supervision and questioning regarding state-owned enterprises. The Judgment also failed to explain why such provision was not part of the statutory duties and powers of a member of the Legislative Yuan. Clearly the Judgment is illegal for being a judgment without reasons.
- (4) The original Judgment found that in CHC’s decision-making process regarding entering into the contract, the defendant Lin Yi-shi had asked ChinaSteel for information about boiler stone procurements; had met with and sought the help of the chairmen and general managers of ChinaSteel and CHC; had instructed Nie ○-Hsien, the supervisor of the legislative member office, to draft a request slip in the name of “Lin Yi-shi, Member of Legislative Yuan”; had sought the help of and made requests to Shih Yen-Hsiang, the Minister of Economic Affairs; and that none of these acts constituted “acts in the course of duty” for a member of the Legislative Yuan. The Judgment is therefore illegal for failing to apply the law, applying inappropriate laws, being without reasons, having conflicting

reasons, and failing to thoroughly investigate evidence.

- 2. The original Judgment held that the defendant Lin Yi-shi did not commit the offense of accepting a bribe in the course of duty, pursuant to Article 4, Paragraph 1, Subparagraph 5 of the Anti-Corruption Act, and therefore the defendant Shen ○-lan did not commit the offense of accepting a bribe in the course of duty jointly with the defendant Lin Yi-shi. Such holdings are contrary to the facts, and clearly the Judgment is illegal for applying inappropriate laws and being contrary to the rules of legal reasoning.**
- 3. The original Judgment held that the defendant Lin Yi-shi had not committed a “serious crime” referred to in Article 3, Paragraph 1, Subparagraphs 1 to 18, or Paragraph 2, Subparagraphs 1 and 2 of the Money Laundering Control Act; that the defendant Shen ○-lan did not objectively know or foresee that the various monies that Lin Yi-shi handed over to her for safekeeping were criminal proceeds from Lin Yi-shi’s acts of corruption or other illegal means; that the defendants Peng ○-chia, Shen ○-chang and Shen ○-yao had no foresight or knowledge that said monies were related to illegal and criminal proceeds from the defendants Lin Yi-shi or Shen ○-lan’s “corruption” or “blackmail”, and that they had no objective criminal intention to commit the crime of money laundering. Such findings of fact are contrary to the evidence, and the Judgment is erroneous for inappropriate application of the law, violating the rules of experience, and violating the rules of legal reasoning.**
- 4. The original Judgment had held directly that the witness Chen ○-Hsiang’s testimony was not credible; that the defendant Lin Yi-shi had not exercised any actual influence in his role as Secretary-General of the Executive Yuan over the acts of any governmental authority or official, regarding renewal of the boiler stone and boiler slag contract in 2012, so that there was no “act in the course of duty” and therefore no constitution of the offense of bribery in the course of duty by a civil servant. Such findings of fact are clearly contrary to the rules of experience and legal reasoning, so that the Judgment is erroneous for inappropriately applying the law and having conflicting reasons.**