IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 225

Magistrate's Appeal No 9110 of 2021/01

Between

Chang Peng Hong Clarence

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9110 of 2021/02

Between

Public Prosecutor

… *Appellant*

And

Chang Peng Hong Clarence

… *Respondent*

Magistrate's Appeal No 9111 of 2021/01

Between

Koh Seng Lee

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9111 of 2021/02

Between

Public Prosecutor

… *Appellant*

And

Koh Seng Lee

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Statutory offences — Prevention of Corruption Act]
[Criminal Procedure and Sentencing — Sentencing — Appeals]
[Criminal Procedure and Sentencing — Sentencing — Penalties]

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Chang Peng Hong Clarence
v
Public Prosecutor and other appeals

[2023] SGHC 225

General Division of the High Court — Magistrate's Appeals Nos 9110 and 9111 of 2021/01 and Magistrate's Appeals Nos 9110 and 9111 of 2021/02
Vincent Hoong J
5 October 2022, 30 January, 23 March 2023

17 August 2023

Vincent Hoong J:

Introduction

1 This case involved accused persons who had claimed trial to corruption charges disclosing more than $5 million paid in gratification. It raised questions concerning the Prosecution's disclosure obligations, as well as the operation of penalty orders under s 13 of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA").

2 Chang Peng Hong Clarence ("Chang") and Koh Seng Lee ("Koh") are the respective appellants in Magistrate's Appeals 9110/2021/01 and 9111/2021/01. In this judgment, when dealing with the appeals against conviction and sentence, I refer to Chang and Koh collectively as the appellants. Chang was convicted of 19 charges under s 6(*a*) of the PCA and one charge

under s 5(*a*) of the PCA. Koh was convicted of 19 charges under s 6(*b*) of the PCA and one charge under s 5(*b*) of the PCA.

3 Chang and Koh's charges are mirrors of each other. The first 18 charges, brought under ss 6(*a*) and 6(*b*) of the PCA, relate to payments from Koh to Chang while Chang was employed by BP Singapore Pte Ltd ("BP"). These were made between 31 July 2006 and 20 January 2010. The 19th charges faced by Chang and Koh, which were brought under s 5 of the PCA, concern a payment of US$150,000 from Koh to Chang on or about 26 July 2010, which was after Chang had left the employ of BP. The 20th charges faced by Chang and Koh, which were brought under ss 6(*a*) or 6(*b*) of the PCA, pertain to Chang and Koh corruptly agreeing to accept or give gratification, being payments for Mindchamps Preschool @ City Square Pte Ltd ("Mindchamps City Square"), as an inducement for Chang to advance the business interest of Pacific Prime Trading Pte Ltd ("PPT") with BP.

4 The appellants were each sentenced to a total of 54 months' imprisonment. Chang was also ordered to pay a penalty of $6,220,095, with an in-default imprisonment term of 28 months' imprisonment.

5 Chang and Koh appealed against their convictions and sentences, while the Prosecution appealed against the sentences imposed on the appellants. Having heard and considered the submissions of parties, I dismissed Koh's and Chang's appeals against conviction on each of their first 19 charges, and allowed their appeals against conviction on their respective 20th charges. On the remaining 19 charges, I dismissed Koh's and Chang's appeals against their sentence and allowed the appeal by the Prosecution, imposing a sentence of 80 months' imprisonment for both appellants. I further ordered that Chang's penalty order be substituted by three penalty orders under s 13(1) of the PCA

for the amounts of $1,796,090, $1,905,520, and $2,175,985, with a total in-default imprisonment term of 2129 days' imprisonment.

6 I set out the detailed reasons for my decision below, incorporating the oral judgments which I delivered at the hearing of the appeals.

Undisputed facts

7 The detailed facts surrounding Chang and Koh's offences can be found in the District Judge's ("DJ") grounds of decision (see *Public Prosecutor v Koh Seng Lee and another* [2022] SGDC 66). For present purposes, it suffices to note the following.

Relationship between Chang and Koh

8 Chang and Koh first met in 1997. Their relationship was not purely commercial. They were friends and their families even went on holidays together.[1]

9 Chang joined BP as a Marine Support Executive in July 1997. He was promoted to Marine Trading Manager from 1 November 1999, and to Regional Operating Unit, Manager Fuels, from 1 April 2003. In 2009, Chang was designated Regional Marine Manager Fuels of the Global Residues Unit and his team covered oil trades in the Eastern Hemisphere.[2]

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1 P23 (para 14) (Record of Proceedings ("ROP") at p 3154); P35 (para 10) (ROP at p 3445); P42 (para 15) (ROP at p 3587).

2 *Public Prosecutor v Koh Seng Lee and another* [2022] SGDC 66 ("GD") at [11] (ROP at p 2624).

10 From 29 December 2004, Chang had the authority to decide the customers to which BP would sell its goods and services. Beginning 28 January 2008, he could commit BP to sales decisions (including the price of goods and services) for up to one year. From 2 January 2009, Chang could agree to payment terms which subjected BP to a degree of credit exposure, and he was authorised to enter into long-term contracts of up to two years' commitment and not exceeding US$25m as of 1 April 2010.[3]

11 Koh was the sole shareholder and executive director of PPT. PPT was incorporated on 5 April 2001, and was in the business of the wholesale and retail trade of mineral fuels and lubricants. PPT was BP's trading counterparty ("TCP") between 2001 and 2015.[4]

Relationship between BP and PPT

12 BP traded bunker fuel with TCPs on an "ex-wharf" or "delivered" basis. In the former circumstance, BP sold bunker fuel to the TCP at its wharf, and title to the fuel was transferred to the TCP at the load port. In the latter, BP would purchase bunker fuel from the TCP and simultaneously sell the fuel to its customer. Whilst BP did not own barges needed to deliver bunker fuel to its customer's vessels, it had long-term charter arrangements for barges and would charge TCPs for the use of these barges when back-to-back sales took place.[5]

13 PPT did not possess licences to sell and deliver oil to ship owners and to operate barges to transport the bunker fuel. Nor did it own storage facilities to store the fuel. It had to rely on BP's licences to conduct trades with ship

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3 GD at [13] (ROP at p 2625).

4 GD at [9] (ROP at p 2623).

5 GD at [14]–[17] (ROP at pp 2625–2527).

owners.[6] PPT enjoyed a netting arrangement with BP under which each party could set off debts owed by the other.[7]

14 Between January 2008 and July 2010, PPT was BP's largest TCP for delivered sales by volume. On the flip side of the coin, BP was PPT's largest trading partner between 2005 and 2010. PPT's trades with BP constituted approximately 80% to 90% of PPT's total traded volume.[8]

Moneys transferred from Koh to Chang or Mindchamps City Square

15 Between 31 July 2006 and 26 July 2010, over 19 occasions, Koh transferred a total of US$3.95m from his HSBC Hong Kong bank account to Chang's HSBC Hong Kong bank account.[9] These transfers broadly pertain to the 1st to 19th charges proffered against Chang and Koh.

16 Separately, Mindchamps City Square was incorporated on 3 September 2009. Koh and Chang's wife were directors and equal shareholders of the company.[10] From September 2009, Koh paid an aggregate of $525,000 to Mindchamps City Square. He was in turn paid $182,500 by Mindchamps City Square between 4 November 2014 and 17 February 2015.[11]

17 In this regard, it is undisputed that: (a) PPT retained all of its profits during the material period of time; (b) the moneys Koh transferred to Chang

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6 GD at [18] (ROP at pp 2627–2628).

7 GD at [20] (ROP at p 2628).

8 GD at [19] (ROP at p 2628).

9 GD at [21] (ROP at p 2628–2629).

10 GD at [24] (ROP at p 2629).

11 GD at [25], [173] (ROP at pp 2630, 2716).

during the financial years ending 31 March 2007, 31 March 2008 and 31 March 2009 exceeded the net profits earned by PPT for the corresponding years; and (c) the aggregate sum Koh transferred to Chang as of 31 March 2008 and 31 March 2009 exceeded the cumulative profits generated by PPT as of these respective dates.[12]

Messages exchanged between Koh and Chang

18 On 20 July 2009, at 2.58pm, Chang sent Koh a message stating, "Our oil coming in tomorrow. Sell as much as possible b4 premium collapses". Koh replied, "Ok. Noted…." at 3.04pm on the same day.[13] I shall refer to these messages as the "20/7/09 Messages".

19 On 1 December 2009, at 8.18am, Chang sent to Chua Hwee Cheng ("Chua"), a Market Coordinator in BP Marine, the message, "Hwee cheng ,For next yr q1, pp will do about 250 kt /mth, vm about 200 kt and bhl 50 kt. Pls pass over all the term with good pricing to pp first . same goes for spot . We will stop trading . Pls try to get mops flat for 500 cst and mops + 2 for 380 cst fm our traders. For external term , pls target below these numbers otherwise we may have difficulty justifying to traders . For more details, pls check with Koh ." I will refer to this message, which Chang forwarded to Koh immediately after sending it to Chua, as the "1/12/09 Message".[14]

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12 GD at [23] (ROP at p 2629).

13 AB1-42.

14 GD at [27] (ROP at p 2630); AB1-43; AB1-44.

Statements provided by Koh and Chang

20 Koh and Chang collectively provided 20 statements to investigating officers ("IOs") from the Corrupt Practices Investigation Bureau ("CPIB") between 18 October 2011 and 5 September 2016.[15] I will refer to these statements at the appropriate juncture.

The decision below

21 Neither Koh nor Chang disputed that Koh had given, and Chang had received, the gratification subjects of the 20 charges. The DJ considered that the main issues were: (a) whether Koh gave (or agreed to give) and Chang received (or agreed to receive) gratification on account of Chang advancing the business interest of PPT with BP; (b) whether these transactions were tainted by an objective corrupt element; and (c) whether Koh and Chang acted with the requisite guilty knowledge.[16]

22 The DJ held that the Prosecution had proved the elements of all charges beyond a reasonable doubt. She found the following arrangement to undergird Koh's transfer of moneys to Chang. First, Chang suggested that Koh set up PPT. Second, both parties understood that Chang would facilitate the appointment of PPT as BP's TCP and help PPT. Third, Chang regarded himself as a co-owner or shadow partner of PPT even though he did not invest any moneys in PPT. Fourth, Koh understood that Chang wielded significant influence over PPT's success. Fifth, Chang asked for and received moneys from Koh, which Chang described as his share of PPT's profits. Sixth, Koh gave Chang the moneys as

15 GD at [29] (ROP at pp 2631–2634).

16 GD at [122]–[128] (ROP at pp 2682–2684).

he did not wish to offend Chang and wanted to preserve PPT's business relationship with BP.[17]

23 This arrangement was supported by the investigative statements Koh provided on 18 and 19 October 2011 ("P1" and "P2" respectively) and the investigative statement Chang provided on 18 October 2011 ("P23"), all of which the DJ found to be accurately recorded.[18] The arrangement was also consistent with the evidence showing that Chang could influence PPT's appointment as BP's TCP,[19] Chang was in a position to and did advance PPT's interest in its dealings with BP,[20] Chang shared BP's confidential information with Koh, and PPT benefited from being BP's TCP.[21] In the latter regard, as BP's TCP, PPT could trade oil with BP with greater ease, offset its payments with BP as part of a netting arrangement, and leverage BP's customer base.[22]

24 To the DJ's mind, it was also significant that Chang received more moneys from Koh than from his employment with BP, the moneys were transferred surreptitiously via bank accounts in Hong Kong, and Chang and Koh both knowingly acted in breach of BP's policies and guidelines.[23]

25 The DJ rejected Chang and Koh's claims that the moneys could not have constituted corrupt payments because: (a) Koh was not fearful of Chang; (b) BP benefitted from having PPT as a TCP and continued dealing with PPT long after

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17 GD at [129], [147] (ROP at pp 2684–2685, 2696–2697).

18 GD at [129]–[146] (ROP at pp 2684–2696).

19 GD at [148(a)] (ROP at p 2697).

20 GD at [148(b)] (ROP at p 2698).

21 GD at [148(c)] (ROP at pp 2699–2700).

22 GD at [148(d)] (ROP at pp 2701–2703).

23 GD at [149] (ROP at pp 2703–2705).

Chang left BP; (c) the sum of the transfers exceeded PPT's profits during the relevant period; (d) the first transfer took place long after PPT had been incorporated and appointed as a TCP; and (e) the final transfer was made after Chang left BP.[24]

26 Dealing with each contention in turn, the DJ found that: (a) Koh was not fearful of offending Chang *per se*, but of offending Chang by rebuffing his requests for money;[25] (b) whether BP benefited from having PPT as a TCP did not impinge on the corrupt nature of the arrangement;[26] (c) PPT formed part of a network of companies that Koh had a stake in and which benefited from PPT's relationship with BP;[27] (d) as the commencement and continuation of payments from Koh to Chang coincided with PPT's growth in profitability, it was not incongruous for Chang to start asking for payment from Koh when PPT's business flourished;[28] and (e) the timing of the final transfer did not imply that the entire series of payments was made for *bona fide* purposes. The DJ found that it was not illogical for Koh to continue acceding to Chang's requests for money until there was greater clarity on where PPT stood with BP.[29]

27 The DJ likewise rejected Chang and Koh's contention that the moneys were made for joint investments in properties. This explanation was not

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24 GD at [150] (ROP at p 2706).

25 GD at [151] (ROP at p 2706).

26 GD at [152] (ROP at p 2707).

27 GD at [155] (ROP at pp 2708–2709).

28 GD at [153] (ROP at p 2707).

29 GD at [154] (ROP at pp 2707–2708).

mentioned in their initial investigative statements. Chang and Koh also failed to maintain a straight story on the purpose and scope of their joint investments.[30]

28 Finally, in relation to the 20th charges faced by Koh and Chang respectively, the DJ held that the payments Koh made to Mindchamps City Square must be considered against the backdrop of the transfers which were the subjects of the other charges, as well as P2. The latter made it clear that Koh made the payments to Mindchamps City Square to avoid offending Chang and to keep PPT's business with BP intact. Viewed in this light, the payments which were the subjects of the 20th charges also constituted a corrupt transaction.

29 In determining the sentences of the appellants, the DJ applied the sentencing framework outlined in the High Court decision of *Takaaki Masui v Public Prosecutor and another appeal and other matters* [2021] 4 SLR 160.[31] Within that framework, the DJ found that the following offence-specific factors going towards harm were relevant:

> (a) While there was no actual harm caused to BP, there was suborning of the agent-principal relationship between BP and Chang, which exposed BP to potential harm through over-concentration of BP's business with PPT and the sharing of BP's confidential information with Koh.[32]
>
> (b) Koh derived substantial benefits from the corrupt arrangement with Chang through the cultivation of Chang as an "insider" in BP.[33]

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30 GD at [156]–[171] (ROP at pp 2709–2716).

31 GD at [254] (ROP at p 2754).

32 GD at [257] (ROP at p 2756).

33 GD at [259] (ROP at p 2757).

(c) The corrupt arrangement between Koh and Chang would have had a negative impact on legitimate expectations of stakeholders in the bunkering industry and society at large.[34]

30 The DJ found that the following offence-specific factors going towards culpability were relevant:

(a) Chang and Koh's scheme involved significant deliberation, planning and careful execution on their parts.[35]

(b) Chang abused his position and betrayed the trust reposed in him by his principal, BP.[36]

(c) Both Koh and Chang were motivated by greed.[37]

(d) The quantum of gratification involved per charge was significant.

31 The DJ went on to assess the appropriate indicative starting sentence to be between 10 and 24 months' imprisonment.[38] After applying the totality principle, the DJ imposed the following individual sentences, with each appellant receiving a global sentence of 54 months' imprisonment:

No.	Koh DAC No.	Chang DAC No.	Amount	Sentence

34 GD at [260] (ROP at p 2757).

35 GD at [262] (ROP at p 2758).

36 GD at [263] (ROP at p 2759).

37 GD at [264] (ROP at p 2759).

38 GD at [269] (ROP at pp 2762–2763).

No.	Koh DAC No.	Chang DAC No.	Amount	Sentence
1	927116-2017	908841-2017	US$300,000	22 months
2	927117-2017	908842-2017	US$350,000	24 months
3	927118-2017	908843-2017	US$300,000	22 months
4	927119-2017	908844-2017	US$100,000	10 months (consecutive)
5	927120-2017	908845-2017	US$100,000	10 months (consecutive)
6	927121-2017	908846-2017	US$350,000	24 months
7	927122-2017	908847-2017	US$200,000	16 months
8	927123-2017	908848-2017	US$200,000	16 months
9	927124-2017	908849-2017	US$200,000	16 months
10	927125-2017	908850-2017	US$150,000	13 months
11	927126-2017	908851-2017	US$200,000	16 months
12	927127-2017	908852-2017	US$200,000	16 months
13	927128-2017	908853-2017	US$200,000	16 months

No.	Koh DAC No.	Chang DAC No.	Amount	Sentence
14	927129-2017	908854-2017	US$200,000	16 months
15	927130-2017	908855-2017	US$150,000	13 months
16	927131-2017	908856-2017	US$100,000	10 months (consecutive)
17	927132-2017	908857-2017	US$300,000	22 months
18	927133-2017	908858-2017	US$200,000	16 months
19	927134-2017	908859-2017	US$150,000	13 months
20	927135-2017	908860-2017	US$388,888 ($525,000)	24 months (consecutive)

32 The DJ further imposed a penalty order on Chang of $6,220,095 under s 13(1) of the PCA, with an in-default imprisonment term of 28 months' imprisonment.[39]

Parties' submissions

33 I outline in brief the parties' submissions as to the appeals on conviction and sentence. I will refer to the parties' submissions in more detail at the appropriate juncture.

[39] GD at [283] (ROP at p 2769).

34 The appellants made, *inter alia*, the following submissions in disputing the safety of their convictions below:

(a) The evidence indicated that there was no corrupt arrangement between Chang and Koh.[40] Chang had not given Koh any preferential treatment, and Koh knew this.[41] The DJ also erred in rejecting the defence that the transfers were made for *bona fide* joint investments.[42] There was also no evidence that the fund transfers were tainted by any corrupt intent.[43]

(b) No offence of corruption was disclosed based on the DJ's finding that the fund transfers from Koh to Chang represented Chang's share of PPT's profits.[44]

(c) The DJ's finding that Koh's payments to Mindchamps City Square under the 20th charges were part of a corrupt scheme was against the weight of evidence, as the objective and contemporaneous evidence showed that Koh's investments were legitimate.[45]

(d) Koh also contended that the Prosecution, by failing to disclose CPIB statements recorded from the appellants in a timely fashion, breached its disclosure obligations in a way that materially prejudiced

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40 Koh's Written Submissions dated 26 September 2022 ("KWS") at paras 122–228; Chang's Written Submissions dated 26 September 2022 ("CWS") at paras 247–318.

41 KWS at paras 122–156; CWS at paras 119–226.

42 KWS at paras 164–192; CWS at paras 364–406.

43 KWS at paras 201–228; CWS at paras 324–361.

44 KWS at paras 106–121; CWS at paras 319–323.

45 KWS at paras 178–192; CWS at paras 54–84.

his defence.[46] Koh also argued that the Prosecution's failure to call Chua as a witness was a breach of its additional disclosure obligations that justified drawing an adverse inference against the Prosecution.[47] The most appropriate remedy for these breaches would be Koh's acquittal.[48]

35 In response, the Prosecution submitted that the DJ was correct to find that the fund transfers had a corrupt purpose,[49] that the fund transfers under the 20th charges were part of a corrupt scheme,[50] and that the joint investment defence raised by the appellants was unsupported by evidence.[51] It also argued that it was not obliged to disclose the appellants' statements based on its disclosure obligations, and in any event, the appellants were not prejudiced in the conduct of their defences.[52]

36 The appellants' submissions as to the appeals on sentence were, *inter alia*, as follows:

(a) Both appellants contended that as there was neither intangible harm nor intangible detriment caused to BP, the level of harm should be assessed within the lower end of the "slight" category under the framework in *Goh Ngak Eng v Public Prosecutor* [2022] SGHC 254

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46 KWS at paras 39–63.

47 KWS at paras 64–82.

48 KWS at paras 83–105.

49 Respondent's Submissions dated 26 September 2022 ("RS") at paras 11–38.

50 RS at paras 77–84.

51 RS at paras 39–76.

52 RS at paras 85–92.

("*Goh Ngak Eng*").[53] Not only was there no evidence that Koh had made any profit from the arrangement with Chang,[54] there was also no evidence of detriment caused to either third parties[55] or the development of the bunkering industry in Singapore.[56]

(b) As to culpability, Koh argued that his culpability should be assessed within the lower end of the "moderate" category, as the total amount of gratification had to be placed in the context of the negligible benefit he derived over the offending period.[57] Chang argued that his culpability should be assessed between the low and middle range of the "medium" category, as there was an absence of threats or coercion.[58] Both appellants contended that the DJ had erred in finding that there was significant premeditation, as there was no active attempt to conceal the fund transfers.[59] Chang contended that there was little abuse of trust as he had delegated substantively all his duties to his subordinates.[60] Koh argued that any abuse of trust on Chang's part should not be imputed to him,[61] and that the DJ was wrong to find that he was motivated by greed as Chang had initiated the arrangement.[62]

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53 Koh's Written Submissions on Sentence dated 9 March 2023 ("KWSS") at paras 14–18; Chang's Written Submissions on Sentence dated 9 March 2023 ("CWSS") at paras 18–47.

54 KWSS at paras 19–23; CWSS at paras 48–73.

55 KWSS at paras 27–29; CWSS at paras 74–79.

56 KWSS at paras 24–26; CWSS at paras 80–83.

57 KWSS at paras 32–34.

58 CWSS at paras 84–90.

59 KWSS at paras 37 and 38; CWSS at paras 91–100.

60 CWSS at paras 109–114.

61 KWSS at paras 39 and 40 (p 20).

62 KWSS at paras 41–44 (pp 20–21).

(c) The appellants contended that the indicative sentences should be adjusted downwards to reflect an inordinate delay in prosecution.[63] As the charges related to a single arrangement between Koh and Chang, only two sentences from the 1st to 18th charges under s 6 of the PCA should run consecutively with the 19th charge under s 5 of the PCA, with a total sentence of not more than 13 months' imprisonment (Koh) or 14 months' imprisonment (Chang).[64]

(d) As to the enforcement of the penalty order imposed by the DJ, Chang took the position that the in-default sentence of 26 months' imprisonment imposed by the DJ was appropriate, and that other factors pointed to an attachment order being inappropriate in the present case.[65]

37 The Prosecution's submissions as to the appeals on sentence were, *inter alia*, as follows:

(a) The DJ was right in her findings as to the offence-specific factors relating to harm. There was harm caused to BP, Koh received substantial benefit from the appellants' arrangement, there was detriment to other TCPs, and the corruption involved a strategic industry.[66] As to the culpability of the appellants, the DJ also rightly found that there was a high degree of planning and premeditation, there was an abuse of trust by Chang, and the appellants were motivated by greed.[67]

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63 KWSS at paras 40–46 (pp 23–26); CWSS at paras 128–162.

64 KWSS at paras 51–60; CWSS at paras 171–180.

65 CWSS at paras 183–245.

66 RSS at paras 10–19.

67 RSS at paras 24, 28 and 30.

(b) The appellants' charges should be assessed as falling under the categories of moderate harm and high culpability under the *Goh Ngak Eng* framework, with an indicative custodial term of between 28 and 36 months' imprisonment per charge. Six sentences ought to run consecutively, for a global sentence of at least 180 months' imprisonment for both Koh and Chang.[68]

(c) 19 penalty orders ought to be imposed on Chang for each charge of accepting gratification in contravention of the PCA. The court should impose in-default imprisonment terms for each of these penalty orders, with the total in-default sentence adding up to 400 weeks' imprisonment.[69]

(d) In addition to the in-default imprisonment terms, the court should also impose an attachment order on Chang's Hong Kong bank accounts and property in Singapore. This should be done through seizure and sale according to the procedure set out under O 22 of the Rules of Court 2021, including the appointment of a private receiver.[70]

Issues to be determined

38 The issues on appeal were broadly as follows:

(a) first, whether the Prosecution breached its disclosure obligations under *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar*") by belatedly disclosing four of Koh's statements

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68 RSS at paras 32–40.

69 RSS at paras 92–105.

70 RSS at paras 50–91.

(P33–P37) and Chang's statements (all except P23) and if so, the effect of any breach;

(b) second, whether the Prosecution breached its disclosure obligations under *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 ("*Nabill*") by failing to call Chua as a witness and failing to disclose her witness statement and if so, the effect of any breach;

(c) third, whether the offences under ss 5 and 6 of the PCA are made out as a matter of law if the moneys Koh paid to Chang were Chang's share of his profits as a shadow partner of PPT;

(d) fourth, whether there was a corrupt arrangement between Koh and Chang for the latter to use his position in BP to advance PPT's business interest vis-à-vis BP;

(e) fifth, whether the 20th charges, pertaining to payments made by Koh to Mindchamps City Square, formed part of the corrupt scheme;

(f) sixth, whether the appellants' sentences were manifestly excessive or manifestly inadequate based on the application of the sentencing framework in *Goh Ngak Eng*;

(g) seventh, whether individual penalty orders under s 13(1) of the PCA should be imposed for each charge Chang faced for accepting gratification in contravention of the PCA and if so, how the resulting in-default sentences for those penalty orders should be calibrated; and

(h) eighth, whether an order for attachment should be made as a means of enforcing the penalty order(s) imposed on Chang.

Decision on conviction

Whether the Prosecution breached its Kadar *disclosure obligations and if so, the effect of any breach*

39 I begin with Koh's claim that the Prosecution breached its *Kadar* disclosure obligations by belatedly disclosing P33 to P37 to him. Chang couched his claim of tardy disclosure of his statements (apart from P23) as a breach of the Prosecution's *Nabill* disclosure obligations. This was, however, misconceived. *Nabill* concerns the disclosure of statements provided by material witnesses and not accused persons. Nevertheless, in fairness to Chang, I likewise assessed his contention under the rubric of *Kadar*.

40 Counsel for Koh, Mr Lee Eng Beng *SC* ("Mr Lee *SC*"), submitted as follows. It is undisputed that the Prosecution disclosed P33–P35 to Koh on 16 April 2019 and P36–P37 on 17 April 2019. It did so while Koh was under cross-examination.[71] In these statements, Koh provided an account of his friendship with Chang and their purported joint investments in property. More specifically, Koh claimed in these statements that:

(a) Chang stated that he would use the moneys Koh transferred to him to purchase property.[72]

(b) Koh invested $500,000 in Mindchamps City Square between 17 September 2009 and 13 April 2010,[73] and received returns of $100,000 via two cheques in September or October 2014.[74]

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71 KWS at para 50.

72 P33 (Q3/A3) (ROP at p 3394).

73 P34 (para 46) (ROP at p 3397); P35 (paras 16–20) (ROP at pp 3455–3456).

74 P36 (para 43 (Q6/A6)) (ROP at p 3507).

(c) Koh agreed to place money with Chang "for investment in property". This followed a verbal agreement between the parties pursuant to which Chang "expect[ed] 50% of the profits from the investment".[75]

(d) Koh kept records of the moneys he transferred to Chang for investment purposes in a book. He, however, lost this book when shifting offices in 2011.[76]

(e) The TCPs appointed by BP were required to abide by BP's rules and regulations and to act in the best interests of BP. If they failed to do so, their partnership with BP might cease.[77]

(f) Chang sent to Koh the 20/7/09 Messages because Chang wanted to gather information from Koh. Koh understood the 20/7/09 Messages as Chang speculating on the future price of oil.[78]

(g) Chang sent to Hwee Cheng the 1/12/09 Message and told her to provide PPT the "good pricing … first" because PPT was BP's biggest counterparty.[79]

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75 P35 (para 11, para 15 (Q6/A6, Q8/A8, Q22/A22 – Q40/A40), para 45 (Q3/A3 – Q5/A5)) (ROP at pp 3445, 3448–3449, 3451–3455, 3464).

76 P35 (para 15, Q34/A34) (ROP at p 3453).

77 P36 (para 40) (ROP at pp 3505–3506).

78 P37 (para 74) (ROP at p 3535).

79 P37 (para 72) (ROP at p 3534).

(h) Koh had opened a bank account with HSBC Hong Kong as he travelled to Hong Kong frequently. The bank account allowed him to withdraw and spend money in Hong Kong.[80]

41 In *Kadar*, the Court of Appeal held at [113] that the Prosecution must disclose to the Defence material which constitutes: (a) any unused material that is likely to be admissible and that might reasonably be regarded as credible and relevant to the guilt or innocence of the accused; and (b) any unused material that is likely to be inadmissible, but would provide a real (not fanciful) chance of pursuing a line of inquiry that leads to material that is likely to be admissible and that might reasonably be regarded as credible and relevant to the guilt or innocence of the accused.

42 This disclosure obligation does not extend to material which is neutral or adverse to an accused. It only includes material that tends to undermine the Prosecution's case or strengthen the Defence's case. Where, as in the present case, the statutory criminal case disclosure procedures did not apply, *Kadar* disclosure should take place at the latest before the trial begins (at [113]).

43 In *Xu Yuanchen v Public Prosecutor and another matter* [2021] 4 SLR 719 ("*Xu Yuanchen*"), Menon CJ held that statements provided by accused persons fall within the ambit of *Kadar* (at [44]). Menon CJ also clarified that "unused material" for the purpose of *Kadar* refers to material that forms part of the Prosecution's affirmative, rather than responsive, case. The contrary position is inconsistent with the concerns that underlay *Kadar* (at [31]–[32]).

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80 P37 (para 77, Q8/A8) (ROP at p 3537).

44 Against this backdrop, I accepted Mr Lee *SC*'s submission that the Prosecution breached its *Kadar* disclosure obligations by failing to disclose P33–P37 to Koh before the commencement of trial. It is undisputed that Koh claimed that he transferred the funds to Chang for joint investments in property in P33–P37 (which was the position he similarly adopted at trial) and the Prosecution only disclosed these statements to Koh while Koh was under cross-examination. I noted that the Prosecution did not dispute that it had acted in a manner inconsistent with the position set out in *Xu Yuanchen*. It acknowledged that it had planned to confront Chang and Koh with their undisclosed statements if they provided inconsistent testimony at trial. Rather, the Prosecution's position was that it had acted in good faith and without the benefit of *Xu Yuanchen*, which was decided after the conclusion of the trial before the DJ.[81]

45 The above is, however, not dispositive of the inquiry. The next step is to consider the consequences of a *Kadar* breach. In this regard, *Lim Hong Liang v Public Prosecutor* [2021] 5 SLR 626 ("*Lim Hong Liang*") is instructive. In *Lim Hong Liang*, Abdullah J held that in determining the consequences of a *Kadar* breach, the court should assess a number of factors, including the effect of the breach on the evidence against the accused, how the breach prejudiced the accused, whether steps can be or have been taken to remedy the prejudice caused, the causes of the breach, and the conduct of the Prosecution (at [22]).

46 Having applied these factors, I was unable to accept Mr Lee *SC*'s submission that the Prosecution's breach of its *Kadar* obligation vis-à-vis Koh demanded that Koh be acquitted of all 20 charges. Mr Lee *SC* submitted that the belated disclosure of P33–P37 prejudiced Koh in three respects. First, Koh's Defence was unable to effectively cross-examine the CPIB IOs on the contents

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[81] Respondent's Submissions dated 26 September 2022 ("RS") at paras 86–88.

of the undisclosed statements and the circumstances under which Koh provided them. This was purportedly critical because the first four statements Koh provided (P1–P4) were central to the DJ's decision but Koh had proffered contradictory positions across his nine statements. That the Prosecution recalled four witnesses did not cure the prejudice occasioned to Koh. The further evidence of these four witnesses was confined to the specific issues raised in P33–P35 and Koh's cautioned statement (B1–D6).[82] Second, Koh was denied the opportunity to explain the contents of all his statements during his evidence-in-chief.[83] Third, Koh's Defence did not have sight of P33–P37 when making its no-case-to-answer submissions. In this context, the Prosecution conveyed the impression that Koh had only mentioned the joint investment defence after he was charged.[84]

47 I did not find that Koh was significantly prejudiced by the Prosecution's late disclosure of P33–P37. While statements provided by an accused person fall within the ambit of *Kadar*, they stand apart from other unused material. This is given that such statements emanate entirely from an accused person and their contents would, in the ordinary course, be known to him or her. I aligned myself with Menon CJ's observations in *Xu Yuanchen* that an "accused person would almost invariably have known of his earlier statements and would have known of the underlying facts that were or could have been covered in those statements, and there would almost never be a situation of such evidence being overlooked by the Defence despite its relevance as to the innocence of the accused person" (at [43]). Whilst Menon CJ made these *obiter* remarks in considering whether *Kadar* should extend to statements provided by accused persons, I found that

82 KWS at para 54.

83 KWS at paras 57–58.

84 KWS at paras 59–62.

their logic applies forcefully to the question of potential prejudice. Put another way, in the absence of exceptional circumstances such as an accused person's loss of memory, it is difficult to envisage how the Prosecution's failure to disclose what an accused previously stated in an investigative statement to the accused would place him or her in an invidious position.

48 That said, I appreciated the qualitatively distinct positions Mr Lee *SC* advanced. Mr Lee *SC*'s first point was that the Prosecution's belated disclosure of P33–P37 prejudiced Koh's Defence's ability to cross-examine the CPIB IOs. Here, Mr Lee *SC* was not suggesting that the late disclosure of P33–P37 prejudiced Koh because he was completely unaware of the contents of his earlier statements, but that the minutiae might have faded in Koh's memory, and this hindered Koh's ability to challenge the contents of P1–P4.

49 I was not persuaded by this. Before the DJ, Koh did not dispute that he failed to mention in P1–P2 that the moneys he transferred to Chang were for investment in property.[85] His position was that these statements were inaccurately recorded in other unrelated aspects, and he did not mention the joint investment defence because he did not think he was being investigated and the transfers had nothing to do with BP. Given this, I did not see how his lack of access to P33–P37 hindered his counsel's ability to cross-examine the CPIB IOs on the accuracy of P1–P4.

50 Mr Lee *SC*'s next point was that Koh was denied the opportunity to explain the contents of all his statements during his evidence-in-chief. I was not convinced that this occasioned serious prejudice to Koh. After all, it is open to an accused person to testify to what had transpired since anything relevant in

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[85] GD at [138] (ROP at p 2691).

the statements recorded would have pertained to matters that were known to him (*Xu Yuanchen* at [38]). Whilst Koh further suggested that late disclosure hindered the DJ's ability to "make a fair and accurate determination on the weight to be attached to the various statements made",[86] the fact remained that P33–P37 were eventually admitted into evidence and the DJ considered them in holistically assessing the credibility of Koh's defence.

51 Mr Lee *SC*'s final point was that non-disclosure of P33–P37 hampered Koh's Defence in making its no-case-to-answer submissions. I was unable to accept this. The threshold for calling on an accused person's defence is a low one. It suffices that the Prosecution adduces some evidence which is not inherently incredible, and which satisfies each and every element of the charge (*Haw Tua Tau and others v Public Prosecutor* [1981–1982] SLR(R) 133; s 230(1)(*j*) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed)). Even if Koh's Defence was in possession of and could rely on P33–P37 in making its no-case-to-answers submissions, this would not have made a material difference to the DJ's decision. Pertinently, P1–P4, which were adduced into evidence, were inculpatory statements in which Koh broadly admitted to providing gratification to Chang in exchange for Chang suborning his loyalties to BP and advancing the interests of PPT. These statements, along with the other evidence, would have sufficed to establish a *prima facie* case against Koh. Indeed, in *Public Prosecutor v Tan Aik Heng* [1995] 1 SLR(R) 710, the Court of Appeal observed that at the no-case-to-answer stage, the trial judge need not take great pains in examining contradictory statements and evaluating their accuracy and veracity by casting them against each other and other evidence. Such evaluation

86 KWS at para 54.

of evidence would be an appropriate exercise to be carried out at the end of the case when all the evidence has been placed before him (at [31]).

52 For completeness, I accepted the Prosecution's submission that it did not withhold P33–P37 in bad faith. Mr Lee *SC* pointed to an extract of the Notes of Evidence[87] and suggested that this showed that "the Prosecution had conducted its case in a way that was calculated and designed to give the biased impression that [P1–P4] contained admissions which completely corroborated the Prosecution's case theory, while withholding equally important explanations made by Koh in subsequent CPIB statements".[88] I found that the Prosecution's position must be understood in light of the fact that *Xu Yuanchen* was only decided after the conclusion of the trial. Bearing this in mind, I did not find that the Prosecution deliberately misled the DJ.

53 For these reasons, I did not consider that the Prosecution's belated disclosure of P33–P37 warranted acquitting Koh of the 20 charges he was convicted of.

54 My findings above applied with equal, if not greater, force to Chang. It was undisputed that apart from P23, the Prosecution only disclosed Chang's statements to him at the end of the first day of his cross-examination. To this extent, I likewise found that the Prosecution acted in breach of its *Kadar* disclosure obligations. Nevertheless, any prejudice occasioned to Chang was limited, and did not demand that Chang be acquitted of the charges he was convicted of. Beyond a bare assertion that the Prosecution breached its duties of disclosure under *Nabill* (which, as I noted earlier, was misguided), counsel

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87 7/8/18 NE, p 56, line 14 to p 57 line 16 (ROP pp 1031–1032).

88 KWS at para 62.

for Chang, Ms Melanie Ho ("Ms Ho"), did not explain how Chang was prejudiced by the belated disclosure of his statements. I repeat my observations at [47] above.

Whether the Prosecution breached its disclosure obligations under **Nabill** *by failing to call Chua as a witness and failing to disclose her witness statement*

55 I turn to Koh's contention that the Prosecution breached its *Nabill* disclosure obligations by failing to disclose Chua's witness statement to Koh and further, failed to discharge its evidential burden in respect of a material issue by failing to call Chua as a witness. Chang did not raise a similar objection.

56 In relation to the Prosecution's duty to disclose a material witness's statement to the Defence, material witnesses refer to witnesses who can be expected to confirm or, conversely, contradict an accused person's defence in material aspects. The Prosecution is under a duty to disclose the statement of a material witness (who has not been called by the Prosecution as a witness) to the Defence. For the purpose of this additional disclosure obligation, it does not matter whether the statement is favourable, neutral or adverse to the accused. The additional disclosure obligation does not require the Prosecution to carry out a prior assessment of whether the statement was *prima facie* credible and relevant to the guilt or innocence of the accused. Where the statutory disclosure procedure does not apply, the Prosecution ought to satisfy this additional disclosure obligation, at the latest, before the trial begins (*Nabill* at [4], [39], [41], [50]).

57 As for the Prosecution's duty to call a material witness, though the Prosecution has no legal duty to call any witness, its failure to do so may, in certain circumstances, mean that it has failed to discharge its evidential burden to rebut the defence advanced by an accused person. In addition, the court may

draw an adverse inference that the evidence of a material witness, who could have been but was not called by the Prosecution, would have been unfavourable to the Prosecution (*Nabill* at [67]).

58 I deal first with whether the Prosecution breached its *Nabill* disclosure obligations by failing to disclose Chua's witness statement to Koh. I noted that there was some uncertainty over whether Chua provided an investigative statement. I was prepared to assume, in Koh's favour, that Chua did so. Notably, at the oral hearing before me, the Prosecution submitted that the Defence could have requested that the Prosecution voluntarily disclose Chua's statement but did not do so.

59 Mr Lee *SC* submitted that Chua was a material witness because she was an "employee at [BP] whose scope of work involved dealing with various TCPs (including PPT) at the material time" and her evidence "would have greatly assisted the court in determining the veracity of the Prosecution's various assertions of corrupt favours and benefits allegedly granted to PPT as well as the weight to be attached to the evidence of the material defence witnesses".[89] I did not accept this submission. In *Roshdi bin Abdullah Altway v Public Prosecutor and another matter* [2022] 1 SLR 535 ("*Roshdi*"), the Court of Appeal made clear that the "materiality" of a witness is assessed only by reference to the defences the accused person may have disclosed at a particular point in time (at [151], [154]). In the present case, Koh's defence was that he transferred moneys to Chang for Chang to invest in property for their joint benefit. There was, however, no evidence that Chua could shed light on this joint investment defence.

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89 KWS at para 82.

60 I was not persuaded that materiality should be construed more expansively to encompass witnesses who may confirm or contradict the Prosecution's affirmative case. The concerns animating the Prosecution's additional disclosure obligation were that the Prosecution might, despite acting in good faith, fail to disclose statements which might tend to support the defence and that an accused person ought to have access to all relevant information in order to make an informed choice in deciding whether or not to call a material witness (*Nabill* at [39], [44]–[47]). These seemed to me to be directed at ameliorating the prejudice an accused person might face in mounting his *defence*.

61 Even if I was wrong and the Prosecution breached its *Nabill* disclosure obligations by failing to disclose Chua's witness statement to Koh, I did not accept that Koh should be acquitted of all charges. The consequences of any *Nabill* breach depend on the facts at hand. The most critical question is whether, in all the circumstances, the Prosecution's breach is so egregious that it occasions a failure of justice or otherwise renders the conviction unsafe (*Roshdi* at [168], [177]). I found that, at best, the Prosecution's failure to disclose Chua's witness statement to Koh should prompt the court to be more searching in its understanding of and reliance on the 20/7/09 Messages. Though Chua would be well placed as the recipient of the 20/7/09 Messages to shed light on their meaning and might have, as Market Coordinator in BP Marine, provided evidence on whether favours were granted to PPT, the court had other and sufficient evidence to not only discern the meaning of these messages but also ascertain whether Koh and Chang engaged in a corrupt enterprise. I will return to these points at a later juncture. It suffices to note that I did not find that the Prosecution breached its *Nabill* disclosure obligations by failing to disclose

Chua's witness statement and that any purported breach did not, in any event, demand acquitting Koh of all charges.

62 As for Koh's submission that the Prosecution's failure to call Chua as a witness meant that it failed to prove that the 20/7/09 Messages contained confidential information and that Chang granted corrupt favours or benefits to PPT,[90] I deal with this when evaluating the safety of Koh and Chang's convictions.

Whether the offences under ss 5 and 6 of the PCA are made out as a matter of law if Koh's payments to Chang were Chang's share of his profits as a shadow partner of PPT

63 The third issue for my consideration was whether Koh and Chang's offences under ss 5 and 6 of the PCA were made out as a matter of law. For ease of reference, I set out these provisions in full:

> **Punishment for corruption**
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> **5.** Any person who shall by himself or by or in conjunction with any other person —
>
> (*a*) corruptly solicit or receive, or agree to receive for himself, or for any other person; or
>
> (*b*) corruptly give, promise or offer to any person whether for the benefit of that person or of another person,
>
> any gratification as an inducement to or reward for, or otherwise on account of —
>
> (i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; or
>
> (ii) any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body is concerned,

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90 KWS at paras 70–77.

> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 5 years or to both.
>
> **Punishment for corrupt transactions with agents**
>
> **6.** If —
>
> > (*a*) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business;
> >
> > (*b*) any person corruptly gives or agrees to give or offers any gratification to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or …
>
> he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 5 years or to both.

64 On the strength of the DJ's purported finding that the transfers from Koh to Chang constituted Chang's "share of profits" as a shadow partner in PPT, Mr Lee *SC* contended that the arrangement between Koh and Chang amounted to a situation where an agent created his own secret benefits and received moneys representing such benefits.[91] On this analysis, the fund transfers could not be said to have influenced Chang to act improperly for the benefit of Koh. Rather, Chang had every incentive to ensure that PPT performed well so that he could maximise his share of the profits.[92]

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91 KWS at paras 108–114.

92 KWS at paras 115–121.

65 In this vein, Mr Lee *SC* relied on *Leng Kah Poh v Public Prosecutor* [2013] 4 SLR 878 ("*Leng Kah Poh (HC)*"). There, the appellant was a food and beverage manager at IKEA Singapore who was, at first instance, convicted of 80 charges under s 6(*a*) of the PCA read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed). He had received rewards for awarding food supply contracts to two companies, AT35 and FRT.

66 AT35 was a company registered under the name of one Andrew Tee Fook Boon ("Andrew"). Andrew was approached by Gary Lim Kim Seng ("Gary") to convert AT35 into a food supply business. A plan was devised amongst the appellant, Andrew, and Gary for AT35 to supply food to IKEA Singapore. Andrew and Gary subsequently set up a second company, FRT, under the name of one of Gary's employees. Both AT35 and FRT obtained food supplies and sold these products to IKEA Singapore at a marked-up rate. The appellant's role in this arrangement was to give AT35 insider tips on how to make AT35 and FRT's products palatable to IKEA Singapore. He would also exercise his influence to approve AT35 and FRT as the exclusive food suppliers of dried goods and chicken wings to IKEA Singapore.

67 On appeal, the High Court Judge held that there must be at least three parties for a transaction to be corrupt: the principal whose loss is at issue, the agent whose corrupt intention is at issue, and the person or entity inducing the agent to act dishonestly. Accordingly, an agent who has acted with dishonest intent and interfered with the affairs of his principal but has not been induced to do so by a third party is not guilty of corruption (at [8]). On the facts of the case, the High Court Judge found that "Gary and the appellant had landed on the idea together and had decided that AT35 and later FRT were the vehicles by which their scheme could be carried out". In so far as there was "a reasonable chance

that this was a situation where the appellant was effectively paying himself", the Judge acquitted the appellant of the charges (at [12]–[14]).

68 *Leng Kah Poh (HC)* must, however, be read in the context of the criminal reference arising from the case. In *Public Prosecutor v Leng Kah Poh* [2014] 4 SLR 1264 ("*Leng Kah Poh (CA)*"), the Court of Appeal held that it is *not* necessary in every case of establishing the "gratification" of the transaction that it must be proven, as a fact, that there was an act of inducement by the third party upon the agent. Rather, a court should distinguish between inducement as an act of persuasion and inducement as a descriptor of a gratification. The inquiry in relation to an inducement in the context of s 6(*a*) of the PCA is not about the presence of an act of inducement by the third party. As a matter of principle, whether an objective corrupt element exists, and which is related to a finding of gratification, cannot be dependent on who initiated the promise of a gift. The contrary position would mean that the more outrageously an agent behaves in soliciting for the gift, the less likely he would be guilty of the offence of corruption (at [42]–[44], [48]).

69 Additionally, in the situation where the agent has some beneficial or legal interest in a third party, the agent's drawing of his share of the profits obtained by that party from the benefits conferred could be considered a gratification for the purpose of s 6(*a*) of the PCA. Persons who have a shareholding, legal and/or beneficial ownership or entity in a legal entity are not synonymous with that legal entity. In any event, even if an agent has part ownership in the third party and obtained his share of the profits from it, it would be incorrect to assume that the agent's share of the profits was not gratification. An inquiry into all the circumstances, such as the workings of the scheme, is called for (*Leng Kah Poh (CA)* at [54]–[59]). Following from this, the Court of Appeal held that the High Court erred in its assessment of the case and directed

parties to address the court on the appropriate orders to be made. I took the liberty to examine the record of proceedings and noted that the Court of Appeal subsequently restored the sentences imposed by the District Judge.

70 Thus understood, I did not find *Leng Kah Poh (HC)* to assist Koh and Chang. First of all, it was not clear to me that the DJ found that Chang was a shadow partner in PPT and the moneys he received were his share of the company's profits. Reading the salient portions of the DJ's decision in context,[93] it appeared to me that the DJ merely recounted Chang's assertion that he considered himself to be a shadow partner in PPT without making a concomitant finding. This could be gleaned from her observations that "any risk in PPT's business model did not reside with [Chang] as a shadow partner",[94] "Chang *regarded himself* as a co-owner or shadow partner of PPT" [emphasis added] and "Koh did not regard Chang to be his partner in PPT".[95] It was also consistent with Koh rejecting Chang's assertion that he was a shadow partner of PPT in P2, P33 and P35, as well as stating that "Chang did not contribute any money to set up [PPT and] was not involved in the operations of [PPT]" in P35.[96]

71 Second, on Koh's own account, the moneys he transferred to Chang between 2006 and 2010 stemmed from his earnings in MaxFortune (a company incorporated in the British Virgin Islands) and Chang was not, in any way, related to this company.[97]

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93 GD at [34], [144], [147(e)] (ROP at pp 2637–2638, 2695–2697).

94 GD at [144] (ROP at p 2695).

95 GD at [129], [147(d)] (ROP at pp 2685, 2697).

96 P2 (para 25, Q2/A2) (ROP at pp 2780–2781); P33 (para 69, Q1/A1) (ROP at p 3394); P35 (paras 5, 15 (Q5/A5) (ROP at pp 3443, 3448).

97 P35 (paras 43, 45 (Q6/A6)) (ROP at pp 3463–3464).

72 Third, in light of *Leng Kah Poh (CA)*, even assuming that the moneys constituted Chang's "share of profits" as a shadow partner in PPT, this did not *ipso facto* render the charges proffered against Chang and Koh untenable. Whether secret profits received by an agent can be considered a gratification depends on whether there was a gratification by inducement or reward to the agent that led to a dishonest gain or advantage being conferred by the agent on the third party. It is this inquiry to which I now turn.

Whether there was a corrupt arrangement between Koh and Chang for the latter to use his position in BP to advance PPT's business interest vis-à-vis BP

73 The crux of the appeal turned on whether the DJ's finding that there was a corrupt arrangement between Koh and Chang for the latter to use his position in BP to advance PPT's business interest vis-à-vis BP was against the weight of the evidence. This finding underpinned the DJ's holding that the Prosecution had proven the *mens rea* of the charges beyond a reasonable doubt. I assess the safety of Chang and Koh's convictions on the first 19 charges proffered against each of them in this section, before evaluating the propriety of their convictions on the 20th charges in the next.

74 A key strand of Chang and Koh's submissions was that there was no evidence that Chang advanced PPT's business interest with BP because of the payments he received. On the contrary, the evidence purportedly showed that Chang could not and did not advance PPT's business interest. For example, Mr Lee *SC* and Ms Ho both submitted that Chang did not facilitate PPT's initial appointment as a TCP,[98] Koh knew that Chang would not adversely affect PPT's

[98] KWS at paras 126–128; CWS at paras 124–136.

status as a TCP of BP,[99] and Chang had no influence over the price of oil sold by BP to PPT.[100] Ms Ho also pointed to the fact that Chang placed BP's interests before PPT's and BP decided to retain PPT as its TCP even after Chang left the employ of BP.[101]

75 I was unable to accept these submissions. The fundamental obstacle that Chang and Koh faced and failed to overcome was that they had essentially admitted to the corrupt scheme in their investigative statements. I set out the salient portions of these statements:

(a) In P1, Koh stated that in 2000 and 2001, he discussed "setting up a company to trade in marine fuel and to share the profits" with Chang, Chang told him "that he can get BP to appoint PPT as a Marine Bunker Counterparty to trade in marine fuel", and being a TCP carried several advantages including being able to "buy and store the marine fuel in large volume for a term period and [being able to] sell to the petroleum com[p]any at spot price where there is a demand to support the petrol company's position".[102] Koh also stated that Chang "ha[d] the power to terminate PPT's status as a [TCP] with BP".[103]

(b) In P2, Koh stated that in 2004, he felt that Chang "had full authority on marine fuel sales and [could] help [PPT] become [a] counterparty and if [PPT] maintain[ed] a good standard, he [could] give all BP deals to [PPT]". Koh understood that Chang "had the power to

99 KWS at paras 14(a), 129–136; CWS at paras 198–201.

100 KWS at paras 137–145; CWS at paras 150–160.

101 CWS at paras 214–226, 281–295.

102 P1 (paras 4, 6) (ROP at p 2772–2773).

103 P1 (para 15) (ROP at p 2774).

make or break" and "controlled the fate" of PPT. Further, between 2005 and 2010, Chang periodically asked Koh for money. Koh believed that PPT "w[ould] no longer get deals from BP" if he refused Chang's requests and would give Chang moneys "so long as the money [he made] from having this relationship with BP [was] more than what [Chang] had been asking". Koh transferred moneys to Chang via Hong Kong bank accounts at Chang's request and because Chang "did not want to take cash from [Koh] in Singapore".[104]

(c) In P4, Koh reiterated that Chang had the power to choose a bunkering company other than PPT to be BP's TCP and if Chang exercised this power, PPT "would not be able to get the counterparty netting agreement from BP and … [could not] buy marine fuel from BP anymore".[105]

(d) In P34, Koh again stated that he transferred the moneys to Chang's bank account under pressure from Chang and because Chang "had the power to cease the PPT's partnership with BP".[106]

(e) In P35, Koh elaborated on the benefits of being appointed a TCP. He stated that the trades between BP and a TCP need not be done on a "cash on delivery basis" but could be offset and "settled either on a monthly or weekly basis". Additionally, as a TCP of BP, PPT's "oil trading volume … is guaranteed, so that at least the costs bunker barges will be covered and [PPT] will not make a loss. If [PPT] were not a counterparty of [BP], [its] oil trading volume would not be

104 P2 (para 25, Q2/A2–Q6/A6) (ROP at pp 2780–2781).

105 P3 (paras 31–32) (ROP at pp 2789–2790).

106 P34 (para 67, Q2/A2) (ROP at p 3402).

guaranteed".[107] Koh also unequivocally stated that Chang had the power to influence whether PPT was appointed a TCP with BP and the quantity of oil PPT traded with BP.[108]

(f) In P23, Chang stated that he "proposed to Koh to set up a bunker company on his own", which led Koh to set up PPT. Koh and Chang understood that Chang would help PPT: the agreement "was that [PPT would] perform its bunkering role in a legitimate manner … In return, BP [would] give business to [PPT]". Chang was "unable to be an open partner as [he] was gainfully employed by BP and should not be seen as having a business relationship in [PPT]". He also admitted to telling Chua to give "all the term with good pricing to [PPT]" in December 2009. Further, from 2007 or 2008, Koh would transfer money from his Hong Kong bank account to Chang's Hong Kong bank account as Chang's share of profits in PPT.[109]

(g) In P40, Chang admitted that he recommended PPT to be a TCP of BP and had the power to seek approval for PPT to be replaced as a TCP of BP.[110] He also admitted to knowing that he ought not to have a business relationship with PPT whilst being employed by BP.[111]

76 I found that these statements amply supported the DJ's finding that Chang asked Koh to set up PPT, parties shared an understanding that Chang would facilitate the appointment of PPT as BP's TCP, Koh understood that

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107 P35 (paras 7, 9) (ROP at pp 3444–3445).

108 P35 (para 15, Q1/A1–Q2/A2) (ROP at pp 3447–3448).

109 P23 (paras 15–20) (ROP at pp 3154–3155).

110 P40 (para 72, Q3/A3–Q5/A5) (ROP at p 3554).

111 P40 (para 71, Q1/A1, Q7/A7–Q12/A12) (ROP at pp 3554–3555).

Chang was in a position to influence the fortunes of PPT, Chang asked for moneys for what he perceived to be his share of profits in PPT, and Koh transferred moneys to Chang to keep PPT's business relationship with BP intact.[112] Koh and Chang had no good answer for their respective admissions in P1–P4 and P23. Whilst they rehashed their arguments that aspects of these statements were inaccurately recorded,[113] I upheld the DJ's finding to the contrary. There was no merit to Koh's claim that he lacked proficiency in English or Chang's claim that he was in a hurry to sign the settlement agreement with BP. These flew in the face of the numerous amendments Koh made to P1–P4 of his own volition and the fact that Chang had signed the settlement agreement a few days before providing P23.

77 Against the backdrop of these admissions, I found that Koh and Chang's submissions fell away. Whether Chang had the ability to unilaterally appoint PPT as BP's TCP was not material. What was important was that Chang admitted to recommending PPT as a TCP of BP and did so with a view to eventually extracting bribes from Koh.[114] Though Ms Ho submitted that there was nothing inherently nefarious about recommending that an entity become a TCP of BP,[115] this overlooked the context in which Chang's recommendation was made. In particular, Chang's act had to be understood in light of Koh's admissions that Chang had informed him that "he [could] get BP to appoint PPT [as a TCP] to trade in marine fuel", being a TCP was advantageous to PPT, and

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112 GD at [129], [147] (ROP at pp 2684–2685, 2696–2697).

113 KWS at paras 193–200; CWS at paras 327–361.

114 P40 (para 72, Q3/A3) (ROP at p 3554).

115 CWS at para 142.

Chang subsequently asked Koh for moneys as consideration for maintaining PPT's advantageous relationship with BP.[116]

78 Similarly, Koh and Chang's submission that Koh knew that Chang would not adversely affect PPT's status as BP's TCP was undermined by Koh's statements to the contrary. Pertinently, Koh stated that Chang had the power to terminate PPT's status as BP's TCP. Koh went so far as to state that he agreed to transfer moneys to Chang because Chang "was trying to make use of his position to pressuri[s]e [Koh] into giving the money as [Chang] had the power to cease the PPT's partnership with BP" (see [75] above).[117] These admissions showed up Koh's claim to have believed that Chang would not adversely affect the interest of PPT.

79 Whether BP enjoyed a mutually beneficial relationship with PPT such that it was against BP's interest to terminate its relationship with PPT was irrelevant. It is not uncommon for a principal to, in some sense, "benefit" from a corrupt arrangement, for instance, in terms of the stability that a particular commercial relationship provides. This does not mean that the principal's interests were not suborned by an offender and the corrupt arrangement. As Menon CJ explained in *Public Prosecutor v Wong Chee Meng and another appeal* [2020] 5 SLR 807 ("*Wong Chee Meng*"), while the detriment to the principal will often be closely correlated to the profit obtained or benefit secured by the giver of gratification, this is not invariably the case. Even where a principal might be said to have benefitted from being able to receive the required services at an acceptable cost, this does not mean the transaction is

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116 P1 (paras 4, 6) (ROP at p 2772–2773).

117 P1 (para 15) (ROP at p 2774); P3 (paras 31–32) (ROP at pp 2789–2790); P34 (para 67, Q2/A2) (ROP at p 3402).

unobjectionable. The fact remains that the agent-principal relationship has been suborned by the agent's failure to disclose the true position to the principal, including the personal benefits the agent has received without the principal's knowledge (at [64]).

80 Chang and Koh's next contention was that Chang had no influence over the price of oil sold by BP to PPT.[118] The short response to this point was that it did not matter. The *actus reus* of an offence under ss 5 or 6 of the PCA is concerned with the giving or receiving of the gratification and this is complete even if the recipient has not yet had any opportunity to show favour to the giver in relation to the recipient's affairs (*Abdul Aziz bin Mohamed Hanib v Public Prosecutor and other appeals* [2022] SGHC 101 at [108]). The other elements of an offence under ss 5 or 6 of the PCA, *viz*, the consequential link between the gratification and the act the gratification was intended to procure, the objective corrupt element in the transaction, and that the gratification was given or received with guilty knowledge, likewise do not demand that a benefit actually be conferred. Section 9 of the PCA puts the aforesaid on a statutory footing for offences under ss 6(*a*) or 6(*b*) of the PCA.

81 In any event, I saw no reason to interfere with the DJ's finding that Chang did in fact advance the business interests of PPT with BP and was moved to do so by the bribes he received from Koh. As I noted earlier, Koh and Chang admitted that Chang recommended that PPT become a TCP of BP,[119] there were numerous advantages that BP's TCPs enjoyed, and the evidence also supported that Chang did so with a view to eventually extracting bribes from Koh (see [77] above).

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118 KWS at paras 137–145; CWS at paras 150–160.

119 P40 (para 72, Q3/A3) (ROP at p 3554).

82 Additionally, I agreed with the DJ that the 20/7/09 Messages and the 1/12/09 Message evinced that Chang had advanced PPT's interest vis-à-vis BP. The DJ found these messages to show that Chang had favoured PPT under the guise of business strategy[120] and divulged BP's confidential information to Koh.[121]

83 In this regard, I rejected Ms Ho's submission that Chang sent the 1/12/09 Message amidst a crisis, *ie*, when "prices were tanking" and no party wanted to purchase oil such that he was doing PPT a disfavour in directing Chua to allocate a larger trade of oil to PPT. Ms Ho also submitted that it was only natural that a party who purchased a greater volume of oil enjoyed cost savings. I found this to be an unbelievable interpretation of the 1/12/09 Message.

84 The 1/12/09 Message had to be understood in light of the following. First, Koh and Chang admitted to the corrupt scheme in their investigative statements. In particular, Koh claimed that Chang could "give all BP deals to [PPT]" in P2 and Chang also claimed that he regarded himself as a "shadow partner" of BP in P23.

85 Second, Chang was unable to maintain a consistent account of why he had sent the 1/12/09 Message. It was telling that Chang did not mention that he had sent the 1/12/09 Message to resolve a crisis rooted in an oversupply of oil in his investigative statements P23, P41 or P45. Rather, his explanation of the 1/12/09 Message in P23 was that it was "normal business strategy" for a company to "take care of its biggest partner first" such as by allocating them

120 GD at [148(b)] (ROP at pp 2698–2699).

121 GD at [148(c)] (ROP at pp 2699–2700).

"deals with the most competitive terms".[122] Chang similarly claimed that he instructed Chua to "pass all the good term pricing to Koh first because PPT did most of the term and spot deals for BP" and "had vast experience serving BP's customers and … bought the most volume of term fuel oil from BP" in P41 and P45 respectively.[123]

86 Third, the testimonies of PW3 Mr Christopher Lu Feng (Regional Marine Manager of BP) ("Mr Lu")[124] and PW5 Theresa Zapiecki (Regional Compliance Director of BP's Integrated Supply and Trading Division ("Ms Zapiecki") do not support Ms Ho's submission.[125] Mr Lu and Ms Zapiecki attested that BP's manner of allocating trades to various TCPs was information that should not be shared with its TCPs as disclosure weakened BP's bargaining position,[126] and that Chang had granted "a market participant unfair advantage in the market by disclosing BP's intended trading strategy".[127]

87 The above provided important context to the 1/12/09 Message and showed Chang's in-court explanation of the message to be disingenuous. These strands of evidence also provided ample basis for the DJ to infer that Chang sent the 1/12/09 Message with the intention of favouring PPT in the absence of Chua's testimony.

88 Turning to the 20/7/09 Messages, Koh and Chang submitted that these did not contain confidential information. Koh contended that the information in

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122 P23 (paras 27–28) (ROP at pp 3156–3157).

123 P41 (para 74) (ROP at p 3579); P45 (para 80) (ROP at pp 3944–3945).

124 P5 (ROP at p 2791).

125 ROP at p 499.

126 ROP at pp 419–420.

127 ROP at p 704.

the 20/7/09 Messages was already known to the PPT employees embedded at BP's office.[128] Chang similarly submitted that BP would arrange for loading and delivery of oil in advance of its arrival and it was vital that PPT, as BP's TCP, was privy to this information.[129] However, even assuming that some of PPT's employees were privy to such information, the 20/7/09 Messages were not restricted to BP's imminent receipt of oil. Rather, Chang went further to advise Koh to "sell as much as possible [before the] premium collapses". Chang had no reason to do so as an employee of BP unless he had a vested interest in PPT's success.

89 I was also cognisant that Koh and Chang sung a different tune in their later investigative statements, P35–P37 and P39–P48. For example, Koh claimed that he transferred the moneys to Chang pursuant to an informal agreement between the parties to invest in property in P35,[130] and said that Chang asked him for money in 2006 because the Hong Kong property market was booming at the time in P37.[131] Likewise, Chang claimed that Koh transferred him moneys for joint property investments and that he had purchased various properties with the moneys in his HSBC Hong Kong account in P40 and P42.[132]

90 However, I saw no reason to interfere with the DJ's finding that Koh and Chang's evidence "contained various glaring contradictions and inconsistencies pertaining to the joint investments, including those relating to which properties

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128 KWS at para 151.

129 CWS at paras 186–193.

130 P35 (paras 11–15) (ROP at pp 3445–3455).

131 P37 (para 77, Q3/A3) (ROP at p 3537).

132 P40 (paras 47–48, 50–51) (ROP at pp 3549–3550); P42 (para 18) (ROP at p 3588).

and investments formed part of the joint investment project".[133] I upheld the DJ's finding that the joint investment defence was a sham. This fortified my findings above and also underscored the poor credibility of the appellants.

91 To begin, the appellants did not adequately explain their failure to mention the joint investment defence in their initial investigative statements (see [76] above). Koh and Chang first mentioned the joint investment defence in P35 and P39. These statements were recorded from Koh and Chang on 13 February 2015 and 16 January 2012 respectively, a significant time after they had provided their initial investigative statements on 18 October 2011.

92 Next, it beggared belief that Koh would transfer millions of dollars to Chang for Chang to invest in property when Koh claimed to have not considered Chang a "very close friend" but merely "business [associate]",[134] and their joint investments were characterised by a dearth of documentation and accounting. Chang's claim that he recorded some of the conversations he had with Koh regarding the joint property investments and the flow of Koh's funds in his personal notebooks that he returned to BP was not raised in his investigative statements and did not, in any event, take him very far. After all, Chang attested that the notebooks did not contain details of what was due and owing to Koh nor the capital gains from the purported investments. Rather, Chang merely noted Koh's initial investment and Chang's share of the loan and stamp duties in this notebook.[135] In line with this, Koh claimed that the arrangement between him and Chang "was all verbal and [Chang] did not show [him] any

133 GD at [158] (ROP at p 2709).

134 P35 (para 10) (ROP at p 3445).

135 ROP at p 1871.

documentation".[136] Whilst Ms Ho prepared an Annex in Chang's closing written submissions,[137] which purportedly showed that there was a broad 50/50 split in the moneys that were the subject of the property investments between Koh and Chang and that Chang had rolled over the moneys Koh made from one property into another, this was of limited probative value. There was no objective evidence to support Ms Ho's claims and calculations.

93 In the round, I found the joint investment defence to be inconsistent and illogical. I provide some examples:

(a) The defence was contradicted by Koh's claim in P33 that the "joint business venture" between himself and Chang "did not materiali[s]e" and "[t]here [was] no property under [their] name[s]".[138]

(b) Koh's claim that he transferred the moneys for property investment to Chang at Chang's behest and left Chang to invest the moneys in property[139] was inconsistent with Chang's account that "there were two to three occasions [when] Koh was the one who came up with the figures" for the investments.[140]

(c) Neither Koh nor Chang was able to adequately explain why Koh had to transfer the moneys intended for a limited number of property investments to Koh over 19 tranches. I highlight that the sums that were the subject of the charges ranged from US$100,000 to US$350,000 and

136 P35 (para 13) (ROP at pp 3446–3447).

137 CWS at Annex A.

138 P33 (para 69, Q2/A2) (ROP at p 3394).

139 P35 (paras 11–12) (ROP at pp 3445–3446).

140 P42 (para 19, Q3/A3) (ROP at p 3589).

were transferred over approximately 19 occasions between 31 July 2006 to 26 July 2010. Chang's claim that when he instructed Koh to transfer money to him, he "came up with the figures based on the [anticipated] property price",[141] *ie*, before properties were identified and purchased, beggared belief.

(d) Koh and Chang likewise failed to satisfactorily account for why the transfers took place via bank accounts in Hong Kong. Whereas Koh alleged that he transferred moneys to Chang's Hong Kong bank account at Chang's request and because Chang did not wish to take cash from him in Singapore,[142] Chang first claimed that he opened his HSBC bank account for the purpose of the Mindchamps business,[143] then claimed that the bank account was set up for property investment and because it would be more convenient for Koh to transfer moneys to a bank in Hong Kong,[144] and finally claimed that Koh and himself spontaneously decided to open a bank account with HSBC while they were both in Hong Kong.[145]

(e) Koh and Chang provided irreconcilable evidence on which properties were purportedly the subject of their joint investments and the management of these properties.[146]

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141 P42 (para 19, Q3/A3) (ROP at p 3589).

142 P2 (para 25, Q6/A6) (ROP at p 2781); P36 (para 43, Q4/A4) (ROP at p 3507).

143 P40 (para 46) (ROP at p 3549).

144 P42 (para 19) (ROP at pp 3588–3591).

145 P45 (para 92, Q2/A2) (ROP at p 3947).

146 GD at [159]–[171] (ROP at pp 2709–2716); RS at paras 40–54.

94 Finally, I deal with the argument that it did not make sense for Koh to bribe Chang because the moneys Koh transferred to Chang during the financial years ending 31 March 2007, 31 March 2008 and 31 March 2009 exceeded PPT's net profits during the corresponding period, and the aggregate sum Koh transferred to Chang as of 31 March 2008 and 31 March 2009 exceeded the cumulative profits generated by PPT as of these respective dates. In this connection, Ms Ho submitted that the DJ erred in relying on P55–P57 to find that "PPT stood at the core of a network of companies which Koh had a stake in, and which stood to benefit from PPT's business relationship with BP",[147] because the trust deeds "never formed part of the Prosecution's case".[148] I also concurrently deal with Koh and Chang's submission that the timings of the first and last transfers undermined the existence of a corrupt scheme. To recap, the first and final transfers took place after PPT had been appointed as BP's TCP and after Chang had left BP's employ respectively.

95 I accepted that whether a corrupt arrangement is commercially beneficial to the giver of a bribe and the timing of any moneys transferred are evidence relevant to the existence of the corrupt scheme. That said, in the present case, the probative value of the quantum or timing of the bribes was outweighed by the rest of the evidence. I repeat that Koh and Chang admitted to the corrupt scheme in their investigative statements. Additionally, Chang claimed that Koh would transfer moneys to him "when [PPT] makes money" and not otherwise,[149] Koh admitted that it made sense for him to transfer moneys to Chang "so long as the money [he] ma[d]e from having this relationship with

147 GD at [155] (ROP at p 2708).

148 CWS at paras 260–266.

149 P23 (para 18) (ROP at p 3155).

BP [was] more than what [Chang] had been asking",[150] and both parties treated all the moneys that were the subject of the first 19 charges as having been transferred for the same purpose in their investigative statements.[151]

96 For the above reasons, I upheld the DJ's decision to convict Koh and Chang on the first 19 charges proffered against each of them. Her determination that the elements of these offences were proven beyond a reasonable doubt was not against the weight of the evidence.

Whether the 20th charges were part of the corrupt scheme between Koh and Chang

97 Lastly, I considered whether the 20th charges, which pertained to payments Koh made to Mindchamps City Square, formed part of Koh and Chang's corrupt scheme. Koh and Chang submitted that the objective and contemporaneous evidence showed that the transfers to Mindchamps City Square constituted Koh's legitimate investment in the business. On their account, there was no reason for Koh to concern himself with the affairs of Mindchamps City Square if the business was entangled with the corrupt scheme.[152] It was also significant that Koh made several payments to Mindchamps City Square after Chang informed Koh of his intention to leave BP.[153]

98 I found that the DJ's decision to convict the appellants on the 20th charges was against the weight of the evidence. In dealing with the 20th charges,

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150 P2 (para 25, Q4/A4) (ROP at p 2781).

151 P23 (para 18) (ROP at p 3155); P34 (para 67) (ROP at p 3402).

152 KWS at paras 178–188.

153 KWS at paras 178–188; CWS at paras 61–65.

the DJ held that Koh's payments to Mindchamps City Square "should not be looked at in isolation" but must be considered against the backdrop of Koh's transfers of moneys to Chang at the material time as well as his alleged prior investment in Mindchamps Tampines.[154] The DJ placed weight on Koh's admission that he had paid the moneys to Mindchamps City Square to avoid offending Chang and to keep PPT's business with BP intact.[155] Although Koh was registered as a shareholder and director of Mindchamps City Square, the DJ considered that this was done to secure a lease and did not indicate that the transaction stood apart from the corrupt scheme.[156]

99 The high water mark of the Prosecution's case was P2 and P35, wherein Koh stated that he "did not have the interest of investing into a preschool business like Mindchamps",[157] "all transfers of money to [Chang] were 'money to keep [PPT's] busines[s] intact with BP'",[158] he "did not have much interest in starting [Mindchamps City Square] because [he] did not know how to run this kind of business [but Chang] told [him] that [he] did not have to be involved in the running as long as [he] came up with the money",[159] and he eventually "agreed because [he] did not want to offend [Chang] and affect [their] working relationship".[160]

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154 GD at [174] (ROP at pp 2716–2717).

155 GD at [175] (ROP at p 2717).

156 GD at [175] (ROP at pp 2717–2718).

157 P2 (para 25, Q1/A1) (ROP at p 2780); P35 (para 17) (ROP at p 3455).

158 P2 (para 25, Q5/A5) (ROP at p 2781).

159 P35 (para 17) (ROP at p 3455).

160 P35 (para 17, para 21 (Q1/A1)) (ROP at pp 3455–3457).

100 That said, I found that the DJ read too much into Koh's purported disinterest in Mindchamps City Square. Whilst Koh was not actively involved in the business, the weight of the evidence did not support that Koh had no financial interest in Mindchamps City Square and made the transfers to induce Chang to advance PPT's business interests with BP.

101 For one, Koh's claims that he was disinterested in Mindchamps City Square in P2 and P35 had to be read in tandem with P1, where Koh earlier claimed that he was a shareholder in Mindchamps City Square but did "not go down to the place … or interfere [with] the running of the business".[161] In my view, this contextualised Koh's claims of disinterest and suggested that he was a passive shareholder in the business, rather than that his involvement in Mindchamps City Square was a sham.

102 Additionally, Koh was registered as a shareholder and director of Mindchamps City Square. The DJ accorded little weight to this on the back of Chang's testimony that Koh was registered as a director of Mindchamps City Square because of "additional requirements from the landlord, whereby they wanted somebody more influential" to stand as guarantor of the lease.[162] That Koh's involvement in Mindchamps City Square was important to the securing of the lease was, in my view, a neutral factor. It was, at any rate, outweighed by the evidence I set out below.

103 Pertinently, Koh and Chang had approached DW2 Hu Ning ("Hu") and DW4 Ng Koh Sheng ("Ng") (both employees of BP)[163] and asked them if they

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161 P1 (para 11) (ROP at pp 2773–2774).

162 GD at [175] (ROP at pp 2717–2718).

163 ROP at pp 1442–1443, 2056–2057.

wished to invest in Mindchamps City Square.[164] While this did not mean that Koh could not have or did not bribe Chang to advance PPT's business interests with BP via Mindchamps City Square, it was probative of the legitimacy of the Mindchamps City Square business, particularly as there was no evidence that Hu or Ng shared in Koh and Chang's corrupt scheme.

104 It was also significant that the moneys that were the subject of the 20th charges were transferred at Chang's behest to Mindchamps City Square, in contradistinction to Chang. This was in spite of the fact that the period of time Koh transferred these sums to Mindchamps City Square[165] overlapped with the time he transferred the moneys that were the subject of the first 19 charges. Indeed, the moneys that were the subject of the 20th charge were the only sums Chang did not receive via his HSBC Hong Kong account. I am not suggesting that the mere fact that moneys were paid into distinct bank accounts suggests that they were intended for different purposes. Rather, in light of the pattern and timing of Koh's transfers of moneys to Chang, the fact that the moneys that were the subject of the 20th charges were paid to Mindchamps City Square supported that they were intended for the business.

105 The text messages exchanged between the appellants were also consistent with Koh and Chang's claims to have genuinely invested in a legitimate business. These messages included a message Koh sent to Chang on 15 September 2009 stating, "initial pay up capital sd100k for mindchamp, 50/50,"[166] and a message from Chang stating, "Koh, cdl wants paid up capital to be sd 222k (6 months rental). Have sent Acc no to u on email. Pls transfer sd1

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164 ROP at p 1484–1486

165 GD at [25], [173] (ROP at pp 2630, 2716).

166 P49 (ROP at p 4090, message at 13:48:19).

1 1 k to the new co asap. I will deposit sd 1 1 1 k tomorrow. Need to meet cdl on 23rd to sign lease agreement".[167] They had been exchanged two days before Koh first transferred $111,000 to Mindchamps City Square[168] and before investigations into the appellants' offences commenced. They thus supported that Mindchamps City Square stood apart from the parties' corrupt scheme.

106 Finally, Mindchamps City Square paid $182,500 to Koh between 4 November 2014 and 17 February 2015 as repayment of his director's loans.[169] The Prosecution contended that these payments were only made after investigations into Chang and Koh's offences had commenced and were thus made to provide Mindchamps City Square with a veneer of legitimacy.[170] I did not accept this submission. The Defence had adduced a cheque Koh wrote to Mindchamps City Square dated 24 September 2009 which stated, "Please note the above deposit of S$100,000/= from Mr Koh Seng Lee … will be treated as director's loan".[171] Chang had also stated on 18 October 2011 that he treated $300,000 of Koh's moneys as Koh's loan to Mindchamps City Square in his capacity as director.

107 For these reasons, I found that the DJ's decision to convict the appellants on the 20th charges was against the weight of the evidence. I set aside these convictions.

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167 P49 (ROP at p 4090, message at 18:11:46).

168 PS1 (para 20) (ROP at pp 4170–4171).

169 PS1 (para 21) (ROP at p 4171).

170 RS at para 83(a).

171 ROP at p 3416.

Decision on sentence

The s 6 PCA charges

108 The relevant sentencing framework governing private sector corruption offences under s 6 of the PCA is set out in *Goh Ngak Eng*. I outline below my application of this framework.

Identifying the level of harm

109 I agreed that there was no actual pecuniary loss to BP.[172] However, this did not mean that BP suffered no detriment as a result of the appellants' actions. Such detriment could take the form of being deprived of the opportunity to have selected better or more diverse services or partners on the basis of quality of work (*Goh Ngak Eng* at [106(a)]). In the present case, I considered that there was some detriment caused to BP by the cultivation of the insider relationship between Koh and Chang, and the influence that Chang had within BP. There was sufficient evidence that other TCPs were disqualified on the basis of requirements that PPT did not meet, such as lacking a bunker supply licence from the Maritime Port Authority.[173] In other words, Chang introduced selective barriers that ruled out potentially viable TCPs that BP could have relied on in addition to PPT. The fact that BP was able to source other alternatives after PPT's departure suggests that such alternatives were in fact available.

110 I also gave weight to the Prosecution's submission that there was an overconcentration of BP's business with PPT, which left BP having to coax PPT to stay on and exposed it to additional risk through a netting arrangement

172 KWSS at para 18; CWSS at para 19.

173 GD at [18] (ROP at p 2627).

favourable to PPT.[174] That Chang shared BP's confidential information with Koh in breach of its guidelines was further evidence of potential harm to BP.[175]

111 Chang argued that the coincidence of BP's success with the time PPT was its TCP showed that there was no actual loss to BP.[176] I disagreed. While there was correlation of timing, there was insufficient evidence that PPT was the source of BP's success since the appointment of PPT as BP's TCP coincided with changes in the external market.[177] Moreover, even if BP did derive some benefit from having PPT as a TCP, this did not mitigate the harm of the cultivation of Chang as an insider since BP was deprived of the opportunity to re-evaluate that commercial decision on an ongoing basis on a fair assessment of merit.

112 However, I would not overstate the harm of this cultivation of relationship for several reasons. First, unlike *Goh Ngak Eng*, this was not a situation where the principal paid more than it ought to have for the contractor's services. Second, there was no allegation of loss suffered by the principal through non-functioning products or overpriced work (*Heng Tze Yong v Public Prosecutor* [2017] 5 SLR 976 at [27]–[28]).

113 As for the benefit to the giver of gratification, I agreed with the DJ and the Prosecution that Koh derived substantial benefit.[178] Koh was privy to confidential information, and PPT was exempted from requirements that other

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174 Respondents' Submissions on Sentence ("RSS") at paras 10(a) and 10(d); GD at [257] (ROP at p 2756).

175 RSS at para 10(c); 8/2/18 NE, p 48, line 17 to p 49 line 3 (ROP pp 419–420).

176 CWSS at para 28.

177 15/8/18 NE, p 13 line 25 to p 14 line 11 (ROP pp 1142–1143).

178 RSS at paras 11 and 14; GD at [259] (ROP at p 2757).

TCPs were excluded for failing to meet. Such a level of access is a real indicator of benefit (*Wong Chee Meng* at [65]). I also found that the DJ did not err in concluding that Koh had a beneficial interest in other companies which derived business from PPT's relationship with BP.[179]

114 I also agreed with the Prosecution that potential TCPs suffered detriment.[180] The evidence showed that Chang allocated contracts with good pricing and overlooked certain requirements in favour of PPT. Whilst not all of these third parties were specifically identified,[181] this was not a barrier to the court taking into account this factor in assessing the detriment caused. Such detriment can be gleaned from Chang having asked Chua to "pass over all the term with good pricing to pp first".[182]

115 I agreed with the DJ that the involvement of a strategic industry was a valid consideration.[183] The involvement of a strategic industry may be relevant if the offences in question are "of a sort that have the effect of … generating a sense of unease in the general public" (*Wong Chee Meng* at [67]). The present offences were of the sort that had the potential to undermine public confidence in the development and integrity of the bunkering industry.

Identifying the level of culpability

116 In assessing the culpability of the appellants, I had regard to the amount of gratification given or received. As a general rule, the greater the quantum of

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179 GD at [155] and [259] (ROP at pp 2708 and 2757).

180 RSS at para 17.

181 KWSS at para 28.

182 AB1 at 1-59 (ROP at p 4242).

183 GD at [260] (ROP at pp 2757–2758).

gratification, the more the agent had viewed his position as nothing but a mere conduit for personal gain, and the more blatantly he had disregarded his duty of loyalty to his principal out of greed for personal monetary gain (*Goh Ngak Eng* at [88(b)]). The quantum of gratification also reflects the level of influence or advantage the giver wishes to secure through the bribe (*Public Prosecutor v Ang Seng Thor* [2011] 4 SLR at [47]). The gratification given in the present case was significant.

117 There was also a significant amount of premeditation. The communications between the appellants and the setting up of PPT showed that a long time was spent conceiving the scheme. That said, beyond the use of the Hong Kong bank account,[184] the rest of the scheme was not particularly layered.

118 The duration of offending was also sustained. The scheme perpetrated by the appellants lasted over four years.

119 Further, Chang's abuse of position and breach of trust was significant. I disagreed with Chang that less weight should be accorded to this factor as he was not involved in the transactions and had delegated authority to his subordinates.[185] This ignored the messages he sent personally to Koh to transmit confidential information, and the influence he had over the selection of the range of TCPs that BP relied on. Koh was aware of Chang's position and specifically sought to leverage Chang's breach of duty, and this factor should thus apply to him as well.

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184 GD at [262] (ROP at pp 2758–2759).

185 CWSS at para 112.

120 Finally, I noted that Chang and Koh were motivated by greed. I disagreed that Koh's motive was more benign than Chang's.[186] There was no evidence that Koh gave Chang gratification because of compulsion from Chang (*Chua Tiong Tiong v Public Prosecutor* [2001] 2 SLR(R) 515 at [21]). The long period of planning that took place before any such payments were made also showed that the arrangement was predetermined and considered by both parties.

Identifying the applicable indicative sentencing range

121 Taking into account the above factors, I assessed the culpability of the appellants at the lower level of high, and the level of harm at the lower level of moderate. This provided an applicable sentencing range for an offender claiming trial of two to three years' imprisonment.

Identifying the appropriate starting point within the indicative sentencing range

122 Within this applicable sentencing range, I considered that the appropriate starting point should fall within the lower end of that range. The sentences for the charges should start from a period of 24 months for the charges involving the lowest amount of gratification and rise to 32 months' imprisonment for the charges involving the highest amount of gratification of US$350,000.

Making adjustments to the starting point to account for offender-specific factors

123 Two offender-specific factors were highlighted by the appellants in assessing the starting point within the applicable sentencing range. First, both

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186 KWSS at paras 42–44.

appellants were untraced and had not reoffended since investigations began.[187] This was a neutral factor (*BPH v Public Prosecutor and another appeal* [2019] 2 SLR 764 at [85]). Second, a significant amount of time had passed since the offences occurred due to investigations and the court process. Some aspects of this delay stemmed from acts on the appellants' part. In particular, their use of an overseas bank account complicated the investigation process and required foreign mutual legal assistance. However, I accepted that other aspects were not attributable to the appellants. The appellants were charged six years after investigations commenced, with a further year passing before their trial commenced. [188] While the Prosecution or investigative agencies were not to blame, this delay was significant. By the time of the hearing on the appeal against sentence, the appellants faced the prospect of criminal proceedings, with the accompanying uncertainty, for over 11 years.[189] I accorded some weight to this factor in the sentencing calculus (see *Ang Peng Tiam v Singapore Medical Council* [2017] 5 SLR 356).

Making further adjustments to take into account the totality principle

124 I deal with the totality principle at [130] after determining the appropriate sentence for the charge under s 5 of the PCA as well as the global sentence.

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187 CWSS at paras 163–165; KWSS at para 39.

188 KWSS at para 43.

189 CWSS at para 129.

The s 5 PCA charges

125 Turning to the 19th charges under s 5 of the PCA, I considered that parity with the other charges under s 6 of the PCA should be the predominant concern.

126 After all, the 19th charges formed part of the same corrupt scheme subject of the other charges. Where two cases consisting of the same facts are brought under ss 5 and 6 of the PCA respectively, they should generally be viewed with equal severity, and the correct approach in sentencing would be to focus on the specific facts giving rise to the corrupt act (see *Song Meng Choon Andrew v Public Prosecutor* [2015] 4 SLR 1090 and *Public Prosecutor v Tan Kok Ming Michael and other appeals* [2019] 5 SLR 926 ("*Michael Tan*")). Indeed, the gratification subject of these charges was similarly tied to actions that Chang carried out whilst he was employed by BP.[190]

The global sentence

127 I rejected the appellants' submission that it would be inappropriate to have more than three sentences run consecutively as the charges involved a single invasion of the same legally protected interest.[191] The offences were disparate in time. Even if they were not, I would have considered it necessary to impose more than three consecutive sentences to reflect the significant culpability of the appellants (*Mohamed Shouffee bin Adam v PP* [2014] 2 SLR 998 ("*Shouffee*") at [81(b)]).

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190 GD at [271] (ROP at p 2763).

191 CWSS at para 172; KWS at para 58.

128 As to which of the sentences should run consecutively, I considered that these ought to reflect the overall nature of the appellants' offending. I therefore departed from the DJ's decision to run the sentences involving the lowest quantum of gratification consecutively, and instead ordered the second, eighth, twelfth, and eighteenth charges to run consecutively.

129 Having considered all the factors, I imposed the following sentences:

No.	Koh DAC No.	Chang DAC No.	Amount	Indicative Sentence	Adjusted Sentence
1	927116-2017	908841-2017	US$300,000	29 months	21 months
2	927117-2017	908842-2017	US$350,000	32 months	23 months (consecutive)
3	927118-2017	908843-2017	US$300,000	29 months	21 months
4	927119-2017	908844-2017	US$100,000	24 months	16 months
5	927120-2017	908845-2017	US$100,000	24 months	16 months
6	927121-2017	908846-2017	US$350,000	32 months	23 months

No.	Koh DAC No.	Chang DAC No.	Amount	Indicative Sentence	Adjusted Sentence
7	927122-2017	908847-2017	US$200,000	27 months	19 months
8	927123-2017	908848-2017	US$200,000	27 months	19 months (consecutive)
9	927124-2017	908849-2017	US$200,000	27 months	19 months
10	927125-2017	908850-2017	US$150,000	26 months	18 months
11	927126-2017	908851-2017	US$200,000	27 months	19 months
12	927127-2017	908852-2017	US$200,000	27 months	19 months (consecutive)
13	927128-2017	908853-2017	US$200,000	27 months	19 months
14	927129-2017	908854-2017	US$200,000	27 months	19 months
15	927130-2017	908855-2017	US$150,000	26 months	18 months

No.	Koh DAC No.	Chang DAC No.	Amount	Indicative Sentence	Adjusted Sentence
16	927131-2017	908856-2017	US$100,000	24 months	16 months
17	927132-2017	908857-2017	US$300,000	29 months	21 months
18	927133-2017	908858-2017	US$200,000	27 months	19 months (consecutive)
19	927134-2017	908859-2017	US$150,000	24 months	16 months

130 I was of the view that running four charges consecutively did not violate the totality principle. The aggregate sentence for each appellant was therefore 80 months' imprisonment.

The penalty order and in-default sentence

131 The revised quantum of the penalty order to be imposed on Chang following the appellants' acquittals on the 20th charges was undisputed and stood at $5,877,595.

132 The Prosecution submitted that the DJ had followed the erroneous practice of imposing a single penalty for the total amount of bribes received.[192] It argued that the wording of s 13(1) of the PCA required the court to impose a

[192] RSS at para 44(b).

penalty order in respect of each of the 19 charges that Chang was convicted on, and sought a total in-default imprisonment term of 400 weeks (subject to the statutory maximum sentence outlined in s 319(1)(*e*) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC 2010")).[193]

133 The Prosecution's position was based on the plain wording of the provision which states that a penalty shall be ordered by the court where it convicts any person of "an offence" where there has been acceptance of any gratification in contravention of any provision of the PCA ("PCA Offence").[194] In the Prosecution's view, the courts had been fettering their discretion by imposing a single global penalty order, as regardless of the number of charges for a PCA Offence that an offender faced, s 319(1)(*d*)(i) of the CPC 2010 would limit the in-default imprisonment term of the penalty order to half the maximum term of imprisonment for a single charge under ss 5 or 6 of the PCA (*ie*, 30 months' imprisonment).[195] Further, imposing in-default sentences on a per-charge basis would also be consistent with the current practice relating to imposition of in-default imprisonment for fines.[196]

134 Chang submitted during the hearing that the wording of s 13(2) of the PCA indicated that only a single global penalty order should be made regardless of the number of charges for a PCA Offence that an offender faced. This was because s 13(2) of the PCA makes reference to the increase operating on "the penalty" mentioned in subsection (1) above.

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193 RSS at para 45.

194 RSS at para 98.

195 RSS at para 100.

196 RSS at paras 101 and 102.

135 These arguments engaged the issue of the proper interpretation of s 13(1) of the PCA in relation to how penalty orders should be imposed. Specifically, it was necessary to determine the following questions:

(a) First, does s 13(1) of the PCA require the court to impose a penalty order in respect of each charge for a PCA Offence?

(b) Second, if the first question is answered in the negative, does s 13(1) of the PCA limit the court to imposing a single global penalty order under that provision?

The proper interpretation of s 13(1) of the PCA

136 I first set out s 13 of the PCA in full:

> **When penalty to be imposed in addition to other punishment**
>
> **13.**—(1) Where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall, in addition to imposing on that person any other punishment, order him to pay as a penalty, within such time as may be specified in the order, a sum which is equal to the amount of that gratification or is, in the opinion of the court, the value of that gratification, and any such penalty shall be recoverable as a fine.
>
> (2) Where a person charged with 2 or more offences for the acceptance of gratification in contravention of this Act is convicted of one or some of those offences, and the other outstanding offences are taken into consideration by the court under section 148 of the Criminal Procedure Code 2010 for the purpose of passing sentence, the court may increase the penalty mentioned in subsection (1) by an amount not exceeding the total amount or value of the gratification specified in the charges for the offences so taken into consideration.

137 The purposive interpretation of a statutory provision involves three steps, as set out by the Court of Appeal in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [37]:

> (a) First, ascertain the possible interpretations of the provision, having regard not just to the text of the provision but also to the context of that provision within the written law as a whole.
>
> (b) Second, ascertain the legislative purpose or object of the statute.
>
> (c) Third, compare the possible interpretations of the text against the purposes or objects of the statute.

(1) The possible interpretations of the provision

138 I considered the following possible interpretations of s 13(1) of the PCA.

> (a) First Interpretation: The first possible interpretation of s 13(1) followed the Prosecution's approach. Under this interpretation, the phrase "[where] a court convicts any person *of an offence* [emphasis added]" would refer to each *charge* for a PCA Offence. For each charge for a PCA Offence, the court should impose a penalty order under s 13(1). Where an offender faces more than one charge for a PCA Offence, s 13(1) calls for the court to impose the number of penalty orders corresponding to the number of charges for PCA offences.
>
> (b) Second Interpretation: The second possible interpretation of s 13(1) followed Chang's approach. Under this interpretation, the phrase "[*where*] *a court convicts* any person of an offence [emphasis added]" would refer to the *occasion of conviction* of an offender where one or more of the charges involved a PCA Offence. Where an offender was

convicted of one or more charges involving a PCA Offence, s 13(1) calls for the imposition of a single global penalty order on the offender regardless of the number of charges.

(c) Third Interpretation: A third possible interpretation took the approach of the Second Interpretation, save that s 13(1) does not limit the court to the imposition of a single global penalty order.

139 The First Interpretation seems to have been adopted in the case of *Wong Loke Cheng v Public Prosecutor* [2002] SGDC 230. There, individual penalty orders were imposed in respect of multiple charges under s 6(*a*) of the PCA for a total of nine penalty orders, with all nine in-default sentences running consecutively for a total of 18 months' and six weeks' imprisonment. This aspect of the District Judge's decision was not disturbed on appeal (*Wong Loke Cheng v Public Prosecutor* [2003] 1 SLR(R) 522). Save for this case, the Second and Third Interpretations seem to be aligned with the approach consistently adopted by the courts, with a global penalty order being imposed regardless of the number of charges for PCA Offences (see for example *Takaaki Masui and another and other matters* [2022] 1 SLR 1033 ("*Masui*") and *Wong Chee Meng*). Where an offender faces multiple charges involving PCA Offences but is convicted on a subset of these charges on a separate occasion to the rest (such as where a conviction on one charge is upheld on appeal but an acquittal on another charge is reversed), this would involve imposing an additional penalty order separate from the original penalty order imposed (see *Tjong Mark Edward v Public Prosecutor and another appeal* [2015] 3 SLR 375 at [91]).

140 I was satisfied that all three interpretations were *prima facie* possible interpretations of s 13(1) for two reasons.

141 First, it is fundamentally ambiguous as to whether the phrase "where a court convicts any person of an offence" refers to each individual charge on which a person was convicted, or the occasion of conviction where a person could be facing one or more charges. On one hand, the reference to "an offence" supports the former view, as it suggests that penalty orders should be imposed in respect of each charge. On the other hand, this could not be taken to rule out the possibility that the phrase as a whole could refer to the imposition of a penalty order on the occasion of a person's conviction. This latter view is supported by the court's interpretation of similar phrases in other criminal legislation dealing with alternative measures the court may take in sentencing accused persons.

142 Similar wording to s 13(1) of the PCA is found in s 5 of the Probation of Offenders Act 1951 (2020 Rev Ed) ("POA"):

> **Probation**
>
> 5.—(1) **Where a court by or before which a person is convicted** of **an offence** (not being an offence the sentence for which is fixed by law) is of the opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, **the court may**, instead of sentencing him, **make a probation order**, that is to say, an order requiring him to be under the supervision of a probation officer or a volunteer probation officer for a period to be specified in the order of not less than 6 months nor more than 3 years:
>
> **Provided that where a person is convicted of an offence** for which a specified minimum sentence or mandatory minimum sentence of imprisonment or fine or caning is prescribed by law, the court may make a probation order if the person —
>
> …
>
> [emphasis added]

143 Section 5 of the POA states that a probation order may be made by a court where a person is convicted of "an offence". However, in practice, even

where there are multiple charges for which probation would be ordered, a single probation order is imposed upon conviction rather than multiple parallel probation orders (see for example *Praveen s/o Krishnan v Public Prosecutor* [2018] 3 SLR 1300 and *Lim Pei Ni Charissa v Public Prosecutor* [2006] 4 SLR(R) 31). This suggests that the phrase "where a person is convicted of an offence" refers to the occasion of a person's conviction, rather than the individual charges on which they are convicted.

144 Similarly, s 305(1) of the CPC reads:

> 305.—(1) **Where a person is convicted by a court of an offence** punishable with imprisonment and that person is, on the day of his or her conviction —
>
> …
>
> the court may impose a sentence of reformative training in lieu of any other sentence if it is satisfied, having regard to his or her character, previous conduct and the circumstances of the offence, that to reform him or her and to prevent crime he or she should undergo a period of training in a reformative training centre.
>
> [emphasis added]

145 Again, the usual practice of the courts is to order a single sentence of reformative training, even where an offender is convicted of multiple offences (see for example *Public Prosecutor v ASR* [2019] 1 SLR 941 and *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334).

146 Although the POA and CPC are different pieces of legislation that serve different purposes to the PCA, the relevant sections above nevertheless share the common denominator of dealing with the manner in which the court is empowered to impose alternative (in the case of probation or reformative training) or complementary (as in penalty orders) orders in the similar context of criminal sentencing and procedure. Given this similar context, the court

should strive to avoid adopting a construction of the provision which involves accepting that on this point the law is not coherent and self-consistent (Diggory Bailey & Luke Norbury, *Bennion on Statutory Interpretation* (LexisNexis, 7th Ed, 2017) ("*Bennion*") at p 707).

147 Second, there is no indication on the face of s 13, or the PCA as whole, to the effect that the court may only make a single penalty order. Although there is a reference to the singular "penalty" in the title of s 13, as well as in the wording of s 13(2), this could not be read as excluding the possibility of multiple penalty orders under s 13(1) per the First and Third Interpretations.

148 Pertinently, s 2 of the Interpretation Act (Cap 1, 2022 Rev Ed) provides that words in the singular include the plural. Such a rule of statutory construction could aid the determination of the ordinary meaning of the words of the legislative provision (*Tan Cheng Bock* at [38]). I saw no reason why this rule should not apply in the present case. There is no indication of any contrary intention appearing either in the express language of the provision or the broader factual context in which the statute was enacted (*Leeds Group plc v Leeds City Council* [2010] EWCA Civ 1438 at [20] and [27]). As put by Lord Morris of Borth-y-Gest in *Blue Metal Industries Ltd v Dilley (R W)* [1970] AC 827 ("*Blue Metal*"), in relation to the equivalently worded s 21 of the Interpretation Act 1899 (New South Wales), the mere fact that the reading of words in a section suggests an emphasis on singularity as opposed to plurality is not enough to exclude plurality.

149 There is also no indication that extending the interpretation of "the penalty" to the plural would change the character of the legislation, such that it would "presuppose a different legislative policy" (*Blue Metal* at 846). On the facts of *Blue Metal*, the Privy Council found that a reference to the transfer of

shares to another company under s 185 of the New South Wales Companies Act 1961 did not encompass a transfer of shares to multiple companies, as the latter was not merely the plural of acquisition by a single company, such that it was "quite a different kind of acquisition with different consequences". Conversely in this case, imposing multiple penalty orders would not change the character of those penalty orders or the nature of the disgorgement that was sought.

(2) The legislative purpose of s 13(1) of the PCA

150 As the Court of Appeal found in *Masui*, the purpose of s 13(1) of the PCA is to prevent corrupt recipients from retaining their ill-gotten gains (at [116]). In particular, s 13(1) of the PCA serves this purpose by playing a disgorgement function (at [91]–[93]). Steven Chong JCA identified three reasons why the text of s 13(1) indicated as much. First, s 13(1) only targets the recipient and not the giver in a corrupt transaction. Second, s 13(1) only applies where the recipient has actually accepted or obtained gratification, in contrast with an offence under s 6(*a*) of the PCA. Third, even though s 13(1) provides that the penalty order is recoverable as a fine, it is not framed as a fine and does not provide that an offender who unlawfully accepts any gratification shall be liable to pay a fine equivalent to the amount of that gratification.

151 There are two additional points that should be noted about the purpose of s 13(1) of the PCA in ensuring disgorgement of ill-gotten gains.

152 First, s 13 of the PCA serves a deterrent function. As noted by the Court of Appeal in *Masui* at [96], by reason of this provision, potential offenders know that they will not be able to retain their corrupt gains if they are caught.

153 Second, the legislative purpose of disgorgement is disgorgement of the global amount an offender has received as profit. This is indicated by the

presence of s 13(2), which specifically makes provision for disgorgement of gratification accepted in PCA Offences for which charges have been taken into consideration. This purpose as gleaned from the statutory context is supported by extraneous material. As observed by the Minister for Home Affairs during the second reading of the Prevention of Corruption Bill (*Singapore Parliamentary Debates, Official Report*) (13 February 1960) vol 12 at col 380, the focus of disgorgement is the total amount taken by the offender as a bribe. I expand on the significance of this below.

(3) Comparing possible interpretations of the text against the purposes or objects of the statute

154 I found that the legislative intention behind s 13(1) of the PCA supported the Third Interpretation over the First and Second Interpretations.

(A) THE SECOND AND THIRD INTERPRETATIONS SHOULD BE FAVOURED OVER THE FIRST INTERPRETATION

155 I considered that the First Interpretation would result in a variance of sentencing outcomes contrary to the legislative intent of s 13(1) of the PCA. As highlighted at [153] above, the legislative purpose of disgorgement is targeted at disgorgement of the global amount an offender has received as profit. However, under the First Interpretation, two offenders facing charges involving the same global amount of gratification received could face widely differing durations of in-default sentences.

156 Let me elaborate. Where there are multiple charges for accepting gratification under the PCA, and individual penalty orders are imposed in respect of each charge, the in-default imprisonment sentence for each penalty order would be subject to s 319(1)(*b*)(v) of the CPC 2010, which mandates that all the in-default imprisonment sentences run consecutively with each other.

However, upon my examination of more than 50 reported cases with information on the duration of in-default sentences imposed for penalty orders under the PCA, I found that the duration of the in-default term did not seem to scale proportionately with the quantum of the penalty order. Instead, the relationship between duration and quantum appeared to be a logarithmic one, with the duration of imprisonment increasing at a lower and lower rate relative to increases in quantum as the amount of the penalty order increased, tending towards an asymptote of 30 months' imprisonment, which is the maximum allowable pursuant to s 319(1)(*d*)(i) of the CPC 2010 (see also *Tan Yan Qi Chelsea v Public Prosecutor* [2022] SGHC 275 ("*Chelsea Tan*") at [52] in the context of in-default sentences more generally). By way of anecdotal illustration, two weeks' in-default imprisonment was imposed for a penalty order of $4,100.00 in *Public Prosecutor v Yap Sze Kam* [2017] SGDC 89, one month's in-default imprisonment was imposed for a penalty order of $23,398.09 in *Wong Chee Meng*, and 11 months' in-default imprisonment was imposed for a penalty order of $904,716.50 in *Masui*.

157 Due to the non-linear relationship between the duration of in-default sentences and the quantum of penalty orders, it would be likely that the same global penalty amount would attract a very different aggregate in-default sentence if imposed as a single penalty order rather than multiple smaller penalty orders, which in turn would be entirely dependent on the framing of charges against the offender. This variance is at odds with the legislative intent of s 13(1) of the PCA. The number of charges brought against an offender in the process of proving the total amount of gratification ought to be irrelevant to the determination of the overall in-default sentence.

158 I should make it clear that the above analysis is not to say that the calibration of an in-default sentence should be done with reference to a precise

mathematical ratio. However, where trends present themselves in the aggregated application of sentencing practices, the court should be alive to the real-world effect that such trends would have on consistency in the administration of justice.

159 Conversely, the Second and Third Interpretations better accorded with the purpose of s 13(1). Imposing penalty orders on the occasion of conviction would allow the court to take a holistic approach in determining the in-default sentence for those penalty orders based on the global amount of profit received, rather than the arbitrary division of that quantum based on how the charges against the offender were framed.

(B) THE THIRD INTERPRETATION SHOULD BE FAVOURED OVER THE SECOND INTERPRETATION

160 I then compared the two remaining interpretations to the purpose of the statute. In this regard, I found that the Third Interpretation better accorded with the legislative intention of s 13(1) than the Second Interpretation.

161 Placing a limit on the number of penalty orders that a court could impose under s 13(1) of the PCA would limit its effectiveness in furthering the legislative purpose of enforcing disgorgement of ill-gotten gains. As canvassed above at [**Error! Reference source not found.**], the disgorgement function served by s 13(1) of the PCA contributes to the overarching purpose of creating an additional deterrent to offending under the PCA. The presence of this deterrent effect is contingent on the threat of disgorgement being effective. In the context of s 13(1) of the PCA, the main disincentive for convicted offenders not to default on a penalty order is through the imposition of an in-default sentence (*Ho Sheng Yu Garreth v Public Prosecutor* [2012] 2 SLR 375 ("*Garreth Ho*") at [127]). I thus considered that in order for s 13(1) of the PCA

to function as an effective deterrent to prevent corrupt recipients from retaining their ill-gotten gains, any in-default sentence imposed should be of sufficient length to prevent the risk-reward calculus of an offender from being skewed towards defaulting on payment (*Koh Jaw Hung v Public Prosecutor* [2019] 3 SLR 516 at [61]).

162 I was also cognisant that such in-default sentences imposed for penalty orders under s 13(1) of the PCA are, by virtue of being recoverable as a fine, subject to a limit of 30 months' imprisonment pursuant to s 319(1)(*d*)(i) of the CPC 2010. Were only a single penalty order imposable on the occasion of each conviction, this would be the effective maximum in-default term that the court could impose for any penalty order. I found it difficult to accept that Parliament would have, in seeking to effectively incentivise disgorgement of gratification, intended to impose such a limit on the potential in-default imprisonment sentence for a penalty order, no matter the quantum of gratification received by an offender. With a 30-month limit on the default imprisonment term, the marginal effectiveness of the deterrent function played by an in-default sentence would diminish significantly as the quantum of gratification approached millions of dollars. This would hamstring the ability of the State to recover illicit profits from the very offenders from whom disgorgement would be the most necessary. I thus found that the Third Interpretation was more consistent with the purpose of s 13(1) to ensure effective deterrence of offending through disgorging potential profit from PCA Offences.

163 For the above reasons, I found that the Third Interpretation was the one most consistent with the purpose of s 13(1). Accordingly, I rejected the Prosecution's proposed interpretation that penalty orders under s 13(1) should be imposed in respect of each charge for a PCA Offence and found that s 13(1)

did not limit the court to imposing a single global penalty order upon the occasion of an offender's conviction for one or more PCA Offences.

The approach to calibrating penalty orders and in-default sentences

164 Having found that the proper interpretation of s 13(1) of the PCA does not oblige the court to order only a single penalty order on the occasion of an offender's conviction where at least one charge involved a PCA Offence, I then turned to the issue of how to approach the calibration of the penalty order(s) and the in-default sentence(s).

165 To begin with, I was cognisant that there were good reasons for the determination of in-default sentences for penalty orders to differ from how in-default sentences were calibrated for fines administered for other criminal offences. Although in both situations an in-default sentence is used as a disincentive for an offender who may default on payment of money to the court, the context behind the imposition of fines and their accompanying in-default sentences is quite different from that of penalty orders and their in-default sentences.

(a) First, the considerations in quantifying a fine are different from the considerations in quantifying a penalty order. Fines can potentially be far in excess of what offenders are able to pay since they are subject to mandatory minimums, past precedents, and other legislative constraints. Many factors might also be relevant in assessing the quantum of a fine beyond the profit arising from an offence, such as the value of the subject matter of the offence, the amount of injury done, the financial position of the offender, an offender's previous convictions, and the prevalence of the particular type of crime committed (see Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing,

2nd Ed, 2019) at paras 26.013–26.018). This means that a fine may often not be proportionate to the financial gain of an offender. Conversely, penalty orders are calibrated solely according to the amount of gratification that offenders in fact receive and are thus meant to be exactly proportionate to an offender's financial gain. There is much less potential for offenders to be prejudiced.

(b) Second, the current law on penalty orders further minimises the chance of prejudice to offenders. Post *Masui*, penalty orders can be appropriately calibrated where offenders: (a) have their gratification seized by the authorities or have voluntarily disgorged their gratification (*Masui* at [118] and [122]); (b) receive loans rather than gifts of money (*Public Prosecutor v Marzuki bin Ahmad* [2014] 4 SLR 623 at [82]); or (c) never actually receive gratification but merely attempt to do so (*Tan Kwang Joo v Public Prosecutor* [1989] 1 SLR(R) 457 at [5]). All of this points towards penalty orders only being imposed where offenders have actually received gratification and have continued to retain the benefit of it. There is thus much less concern that a lengthy in-default period will become a "disguise" or "cloak" for substantial additional terms of imprisonment (*Garreth Ho* at [128]) because of an offender's inability to pay.

(c) Third, penalty orders are conceptually distinct from fines in terms of the function they serve in sentencing. While fines often serve *both* punitive and disgorgement functions (see for example *Public Prosecutor v Su Jiqing Joel* [2021] 3 SLR 1232), penalty orders are *exclusively* meant to disgorge an offender's profit. The corollary of this is that while fines are part of the punitive burden that the court should consider when sentencing an offender, penalty orders should not be so

considered, absent any evidence that an offender cannot pay the quantum of the penalty order.

166 Given my conclusions above, I was cognisant that any approach should focus on ensuring effective disgorgement of an offender's gratification, and in so doing deter them from offending. The effectiveness of this disgorgement rested almost entirely on the calibration of the in-default imprisonment sentence. In calibrating this in-default sentence, the primary inquiry should thus focus on the necessary duration in order to incentivise disgorgement of profit by that specific offender. Where an offender has not adduced evidence of his or her inability to pay the penalty order, as in the present case, the calculation of this in-default sentence should not be seen as adding to an offender's punitive burden. There is also much less reason for concern that an in-default imprisonment term imposed for a penalty order would cause prejudice to an offender in the same way that it might to a recipient of a fine.

167 I now set out the framework I employed in calibrating the number of penalty orders and their respective in-default sentences, bearing the above and the exceptional quantum of gratification in the present case in mind.

168 The court should begin by looking at the total amount of gratification accepted by an offender, or the total value of the gratification accepted by an offender as judged by the court, depending on the way in which the penalty order was quantified. This is because the imposition of a penalty order is concerned with the total amount of benefit obtained by the offender, rather than the arbitrary division of that benefit between the various charges against an offender (see [153] above).

169 Next, the court should consider the duration of in-default imprisonment necessary to deter an offender from evading payment of the total penalty. This is a fact-specific exercise rather than a mathematical calculation (*Chelsea Tan* at [26]), although the quantum of the penalty order will *prima facie* be a significant indicator of the level of deterrence necessary. In considering the necessary duration of imprisonment, the court should not be constrained by the maximum in-default sentence under s 319(*d*)(i) of the CPC 2010.

170 If the duration of in-default imprisonment the court considers necessary exceeds 30 months' imprisonment, the court should consider imposing more than one penalty order, with the in-default sentences for the penalty orders running consecutively by virtue of s 319(1)(*b*)(v) of the CPC 2010, for the total duration of imprisonment that the court considers just. The duration of the in-default sentence for each of the penalty orders should be adjusted proportionately based on the value of the gratification for each charge that they relate to. I consider that in all but the most egregious cases it is unlikely that more than one penalty order will be necessary.

171 Finally, the court should take a last look at the aggregate sentence to ensure that the default imprisonment term, in addition to any other term of imprisonment that the accused faces, is not crushing overall (*Chia Kah Boon v PP* [1999] 2 SLR(R) 1163 at [20]). However, the application of the totality principle in the context of in-default sentences for penalty orders should be on a much less intrusive basis compared to where in-default sentences are imposed for fines, for the reasons outlined at [165].

Application to the present case

172 I now outline how I applied this framework to the present case.

173 Evaluating the appropriate in-default sentence started by looking at the total amount of gratification. This was significant, amounting to $5,877,595. There was thus good reason to believe that a maximum in-default imprisonment period of 30 months would be insufficient in the present case, as it would lead to the risk-reward calculus for Chang defaulting on the penalty order being imbalanced. As the Prosecution observed in its submissions on the in-default sentence below, taking Chang's last known gross monthly salary of $28,000, it would take him roughly 17 years to earn the penalty amount (as determined by the DJ below) of $6,220,095.[197]

174 Meanwhile, Chang argued, in support of the fact that there was no real risk that he would default on the penalty order, that there was no correlation between the time taken for an offender to earn the penalty sum and whether he would elect to serve out the default imprisonment term, adding that "it is not for the Prosecution to arbitrarily place a value on one's life and liberty".[198] Chang also sought to rely on the case of *Tay Wee Kiat v Public Prosecutor* [2019] 5 SLR 1033 ("*Tay Wee Kiat*") at [6], where the High Court stated that in most cases, offenders with sufficient means are likely to pay orders of compensation to avoid serving the default term.[199]

175 I disagreed with this submission. Given that an in-default sentence is intended to incentivise payment of a penalty order, it would be apropos for the court to consider the extent of an offender's incentive to default on payment, given the specific facts of each case. One of the factors that would be relevant

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197 Prosecution's Supplemental Submissions on s 319 CPC Orders dated 19 October 2020 at para 17.

198 CWSS at para 189.

199 CWSS at para 190.

in assessing an offender's incentive would be the size of the penalty order. In so far as value was being "arbitrarily" placed on an offender's "life and liberty", this was a value that would be assessed by the *offender himself* when choosing whether to comply with a penalty order or face an in-default imprisonment term. There was no evidence that Chang had no means to fulfil the penalty order, and he made no submission to that effect. There was therefore no possibility that Chang, out of impecuniosity, would have no choice but to serve the default term. Given that Chang continued to retain possession of his ill-gotten gains, and thus retained the choice of whether to comply with the penalty order, the court's concern was merely with calibrating the terms of the default imprisonment term to ensure that he had sufficient incentive to disgorge his gratification.

176 Looking at the relative size of the quantum payable in both cases, it was also clear that Chang's reliance on the High Court's remarks in *Tay Wee Kiat* was misplaced. *Tay Wee Kiat* involved compensation orders of $5,900 and $1,900 (see *Tay Wee Kiat and another v Public Prosecutor and another appeal* [2018] 5 SLR 438 at [22]). In context, the High Court's *obiter dicta* on the likelihood of offenders to default on payment were limited to compensation orders, which it acknowledged were often "fairly modest". I thus did not consider *Tay Wee Kiat* to be relevant in informing an assessment of Chang's likelihood of making payment of a penalty sum that was almost a thousand times larger than the compensation orders in that case.

177 Yet another reason why the remarks in *Tay Wee Kiat* should be distinguished was the nature of the offences in that case. The compensation orders in *Tay Wee Kiat* were imposed upon conviction of the accused persons for maid abuse offences under s 323 read with s 73(2) of the Penal Code (Cap 224, 2008 Ed). There was no particular reason to assume that retention of the compensation sum would be of specific importance to the accused persons, and

this issue was not canvassed in the proceedings of that case. Conversely, the subject of the penalty order represented ill-gotten gratification that Chang had arranged to receive. The nature of his offence was *prima facie* suggestive that he was motivated by greed and that he was willing to commit criminal offences for personal financial gain.

178 Taking into account the circumstances of the case as well as the quantum of the penalty order, I considered an in-default term of 70 months to be appropriate in light of the high amount of the gratification. As this exceeded the maximum in-default sentence imposable under a single penalty order, I imposed three separate penalty orders. The first penalty order was in respect of the gratification received under the first to fifth charges, for a total of $1,796,090. The second penalty order was in respect of the gratification received under the sixth to 11th charges, for a total of $1,905,520. The third penalty order was in respect of the gratification received under the 12th to 19th charges, for a total of $2,175,985.

179 I adjusted the in-default sentence for the three penalty orders proportionately based on the relative amount of gratification. I thus imposed an in-default sentence of 651 days' imprisonment for the first penalty order, an in-default sentence of 690 days' imprisonment for the second penalty order, and an in-default sentence of 788 days' imprisonment for the third penalty order.

180 I calculated this adjustment as follows. I first converted the period of 70 months' in-default imprisonment to be counted into days which yielded a total of 2129 days (70 multiplied by 365 divided by 12, rounded to the nearest integer). For each penalty order, I then multiplied this total by a fraction where the numerator was the amount of the penalty order, and the denominator was the total amount of gratification received. For example, for the first penalty

order, the duration of the in-default imprisonment was 651 days (2129 multiplied by 1,796,090 divided by 5,877,595, rounded to the nearest integer). Applying this to the second and third penalty orders yielded in-default sentences of 690 and 788 days respectively.

181 As a brief comment, I note that this approach is not meant to suggest that the total duration of in-default sentences should be decided by a wholly mathematical model. Instead, it is intended to ensure that where the court has already decided on an appropriate global term based on the facts of the individual case, the ratio of the duration of the in-default imprisonment term to the quantum of the penalty order should remain consistent across multiple penalty orders (for example, where a person is subject to two penalty orders for $10,000 and $20,000, the in-default term of the former should be half that of the latter). This ensures that persons subject to multiple penalty orders of differing amounts, but who end up only paying some of them, would receive a proportionate reduction of their total in-default sentence regardless of which penalty order they pay.

182 All the in-default sentences were to run consecutively for a total of 2129 days' imprisonment by virtue of s 319(1)(*b*)(v) of the CPC 2010. I was satisfied that the total imprisonment term in addition to the default imprisonment term was in accordance with s 306(4) of the CPC 2010 and was not crushing overall on the circumstances of the case, taking into account my conclusions at [165(c)].

The attachment order

183 In light of the increased in-default sentences for the penalty orders, I did not consider it necessary to rule on the Prosecution's application for an attachment order. Following the revised in-default sentences, I considered that

there are sufficient measures in place to incentivise payment of the penalty orders. Further, this case involved property held jointly with non-parties to the case which thereby raised particularly difficult questions of prejudice to third parties arising from attachment.

Conclusion

184 To conclude, I upheld the DJ's decision to convict Koh and Chang on the first 19 charges proffered against each of the appellants (DAC-927116-2017 to DAC-927134-2017 in respect of Koh and DAC-908841-2017 to DAC-908859-2017 in respect of Chang) and dismissed their respective appeals.

185 I allowed the appellants' appeals against their convictions in relation to the 20th charges proffered against each of them, namely DAC-927135-2017 (Koh) and DAC-908860-2017 (Chang).

186 In relation to sentence, I dismissed the appellants' appeals against their respective sentences. I allowed the appeal by the Prosecution in respect of both sentences and set aside the sentences of 54 months' imprisonment imposed by the District Judge for Koh and Chang. I imposed a sentence of 80 months' imprisonment for each appellant. I further ordered that three penalty orders under s 13(1) of the PCA be imposed on Chang for the amounts of $1,796,090 $1,905,520, and $2,175,985, with a total in-default imprisonment term of 2129 days' imprisonment.

Vincent Hoong
Judge of the High Court

Ho Pei Shien Melanie, Tang Shangwei (Zheng Shangwei), Dorcas Ong Gee Ping and Goh Sher Hwyn Rebecca (Wong Partnership LLP) for the first appellant;
Lee Eng Beng SC, Thong Chee Kun, Oon Guohao Jonathan and Josephine Chee (Rajah & Tann LLP) for the second appellant;
Jiang Ke-Yue, David Menon and Ong Xin Jie (Attorney-General's Chambers) for the respondent.
