Ding Si Yang *v* Public Prosecutor and another appeal
[2015] SGHC 8

Case Number : Magistrate's Appeal No 158 of 2014/01/02

Decision Date : 16 January 2015

Tribunal/Court : High Court

Coram : Chan Seng Onn J

Counsel Name(s) : Hamidul Haq, Thong Chee Kun, Ho Lifen and Michelle Lee (Rajah & Tann LLP) for the appellant in MA 158 of 2014/01 and the respondent in MA 158 of 2014/02; Alan Loh, Grace Lim, Sherlyn Neo and Asoka Markandu (Attorney-General's Chambers) for the respondent in MA 158 of 2014/01 and the appellant in MA 158 of 2014/02.

Parties : Ding Si Yang — Public Prosecutor

Criminal law – Sentencing – Benchmark sentences

Criminal law – Statutory offences – Prevention of Corruption Act

16 January 2015 Judgment reserved.

Chan Seng Onn J:

1 This case concerns two magistrate's appeals against the decision of the District Judge in *Public Prosecutor v Ding Si Yang* [2014] SGDC 295 ("the GD"). The first appeal, Magistrate's Appeal No 158 of 2014/01, is an appeal by Ding Si Yang ("Ding") against conviction and sentence. The second, Magistrate's Appeal No 158 of 2014/02, is the prosecution's cross-appeal against sentence.

2 After a 25-day trial in the court below, Ding was found guilty on three charges of corruptly giving gratification to three Lebanese match officials as an inducement for them to fix a football match that they would be officiating, which are offences under s 5(*b*)(i) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA").

3 Section 5 of the PCA reads as follows:

> **5.** Any person who shall by himself or by or in conjunction with any other person —
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> (*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,

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.

4 On 24 July 2014, the trial judge sentenced Ding to 18 months' imprisonment on each of the charges, with two (DAC 11276/2013 and DAC 11277/2013) to run consecutively. The total sentence was therefore 3 years' imprisonment.

5 On 19 September 2014, I dismissed Ding's appeal against conviction. On 17 October 2014, I reserved judgment after hearing the arguments of the parties on sentence. In this judgment, I am only dealing with the issues relevant to the appropriate sentence.

The relevant facts

6 The relevant facts, as found by the trial judge, can be briefly summarised. On 2 April 2013, three Lebanese football match officials arrived in Singapore to officiate an Asian Football Confederation ("AFC") Champions League match to be held on the following day. The three officials were Ali Sabbagh ("PW1"), Ali Eid, and Abdallah Taleb.

7 PW1 had been introduced to Ding by one of PW1's friends. Ding used the pseudonym "James Zen" when communicating with PW1. These conversations were innocuous at first. Ding explained to PW1 that he had a company that organised international friendly matches and he was looking to employ overseas referees. However, it turned out that Ding had more sinister motives. Ding's real interest was to get PW1 involved in his match-fixing activities.

8 In March 2013, PW1 called Ding to let him know of his upcoming trip to Singapore. During this conversation, Ding told PW1 that since he was visiting Singapore for the first time, Ding must "take care" of him. When PW1 asked the accused to "find some girls", Ding laughed and told him that girls "[are] very easy in Singapore".

9 Ding was also aware that Abdallah Taleb and Ali Eid would be coming to Singapore together with PW1 in April 2013. In an email to PW1, Ding had asked PW1 if the two of them would be "interested in doing business".

10 After his arrival in Singapore, PW1 had several conversations with Ding about "girls". PW1 said that Ding called him after a meeting in a Subway restaurant to tell PW1 that he wanted to "give" him girls, and asked PW1 what type of girls he needed. After checking with the other two match officials, PW1 subsequently asked Ding to provide them with the girls he promised.

11 In the early hours of 3 April 2013, the three match officials were visited by three social escorts who provided them with sexual services that the match officials did not have to pay for. The trial judge found that it was Ding who supplied them with the social escorts, at no cost. Ding used an intermediary, one Choo Beng Huat, to contact the "mamasan" of the girls. The extent of Choo's involvement is not entirely clear as Choo was not called as a witness. While there is no evidence that the social escorts were expressly told to provide sexual services to the match officials, the trial judge found that sexual services were within the scope of the services that they were to provide, and that payment would be forthcoming from whoever booked them for this purpose.

12 Before coming to his decision as to Ding's motive for giving the match officials gratification, the trial judge found that Ding was either a match-fixer or involved in match-fixing. The trial judge was

inclined to believe PW1's testimony that Ding had asked him to fix an AFC Cup quarter-final match in September 2012, but PW1 did not do so, which resulted in a scolding from Ding by email. PW1 also stated that in an AFC Cup semi-final match held in Iraq in October 2012, PW1 (as the reserve referee) overheard two of the main match officials speaking about fixing the match. One of them said that "James" would be giving him money and a mobile phone.

13 Ding's involvement in match-fixing is also apparent from the contents of certain emails. Of particular interest are two emails that Ding sent to PW1. The first email contained several links to videos of certain controversial refereeing decisions that had been uploaded to YouTube. The forensic examination of Ding's notebook did not uncover the exact email that was sent to PW1 but similar emails sent to other persons were retrieved, and PW1 gave evidence that he received a similar email from Ding. [note: 1]

14 For context, I will set out more details about this email. It was titled "Education Video". [note: 2] The email had two sections, one "For REFEREES" and one "FOR ASSISTANTS REFEREES [*sic*]". For referees, Ding had a list of videos under the headings "How to give Penalties if we WANT goals" and "BEST Penalty Given". In describing this "best" penalty, Ding had written "how he do job Saudi Referee, nobody drop nobody do anything in the box when corner come in he just blow".

15 For assistant referees, he also had videos listed under the following headers: "Look at how the assistant referees put up FLAG (goalkeeper move before kick or players go into penalty box encroachment) and RETAKE the penalty if miss!!", "If we WANT goals; clear OFFSIDE but Goal given" and "If we DO NOT want goals; NO OFFSIDE but Goal NOT given".

16 Ding told PW1 to watch the videos to do a "good job". PW1 understood this to mean that Ding wanted him to make the wrong decisions. As the trial judge put it, "people do not normally send FIFA officials links to videos showing bad or controversial refereeing decisions and then telling [*sic*] them to 'do a good job'". As Ding kept a high level of operational security, the trial judge inferred that he did not erase this particular email because "it was a meticulously curated set of YouTube links and he may have had reason in the future to send it to other referees" (the GD at [52]). This email, which was kept in an encrypted email folder, was retrieved from Ding's notebook. [note: 3]

17 The second email (dated 6 August 2012) was in response to questions that PW1 sent Ding. [note: 4] The trial judge summarised the email as follows (at [55] of the GD):

> 55 The e-mail, which is too lengthy to reproduce here, exhorted PW1 to look at the videos to "try to understand how to do a good job." The e-mail also purported to answer two of PW1's questions:
>
> 55.1 The first answer was that they (as the accused used "we" instead of "I") did not "do jobs" for all matches and gave 4 reasons why they would not do a job.
>
> 55.2 The second answer was that PW1 "can stop do job anytime you want. There is no force or must do." However, he assured PW1 that nobody will stop because "this business give better money in 1 year more than you be AFC referees for 10 years."

18 There was also an email on 5 November 2012 that Ding sent to PW1 that said: "Like I said, if you feel comfortable or confident to do a job let me know."

19 The trial judge also noted the furtiveness of the transaction. Ding's use of a false name in

dealing with the match officials has already been mentioned (at [7] above). He used a SIM card registered to an unknown foreigner when calling PW1 on his handphone. He also encrypted his notebook and used email and messaging services that involved encrypted communications.

20 Nevertheless, the trial judge found that there was, as yet, no agreement between Ding and any of the match officials to fix any "actual" match. Instead, Ding had provided the gratification to induce the match officials to *agree* to get *involved* with Ding in match-fixing. To borrow the trial judge's words, Ding was trying to secure an "in principle" agreement before he would divulge the necessary particulars. In a sense, it was part of the preliminary preparation to the actual act of match-fixing. The corrupt object of the transaction, therefore, is the *buying over* of the match officials, the type of act that Yong Pung How CJ described aptly in *Hassan bin Ahmad v Public Prosecutor* [2000] 2 SLR(R) 567 at [20] as the purchase of the recipient's servitude.

The trial judge's reasons for the sentence

21 In determining the appropriate sentence to be meted to Ding, the trial judge looked at the harm or potential harm of the offence, as well as Ding's individual culpability.

22 On the issue of harm, he noted that match-fixing offences have the effect of putting the sport into disrepute. They also affect Singapore's reputation as a place with low levels of corruption, especially taking into account Singapore's drive to be a prime venue for prestigious international sporting events. He also found that the harm caused by match-fixing today is *greater* than in the past, as a result of the advent of online betting, as this meant that such offences would be more lucrative and harder to detect. Nevertheless, he considered the fact that the accused's offence did *not* result in an actual match being fixed as being relevant to the assessment of the harm or potential harm.

23 As for Ding's individual culpability, the trial judge found that Ding was well aware that match-fixing would have deleterious effects on both the global image of the sport and the reputation of Singapore. It was a premeditated offence done in view of the potential profits that could accrue to him if he successfully cultivated the match officials. Ding also demonstrated persistence in his attempts to get PW1, as well as the match officials working with PW1, involved in match-fixing. In this regard, the trial judge noted that Ding had asked PW1 on more than one occasion whether he was interested in "doing business" and Ding also posed the same question to PW1 with respect to the other two match officials once he learned that they were coming to Singapore.

24 Ding was also found to be part of an organised group to carry out match-fixing. However, the trial judge did not find that the accused was a member of a "large international criminal syndicate", at least on the scale proposed by the prosecution. He also remarked that he would have been prepared to pass the sentence suggested by the prosecution (of 4 to 6 years' imprisonment) if there was evidence that showed that Ding played a "major role" in a large criminal organisation.

25 In awarding an imprisonment term of 18 months per charge, the trial judge was also cognisant that this was significantly higher than what the match officials received after they pleaded guilty. PW1 was sentenced to 6 months' imprisonment, while Ali Eid and Abdallah Taleb were both sentenced to 3 months' imprisonment each. The trial judge justified this on the fact that Ding was more culpable than the match officials.

26 However, the trial judge declined to award an additional fine as he was of the view that the imprisonment term was sufficiently deterrent and there was no evidence that Ding benefitted financially as a result of these particular offences.

Summary of parties' submissions

Ding's submissions

27 Ding's counsel submits that the sentence imposed is unduly and manifestly excessive, and completely disproportionate, with regard to both the established sentencing benchmarks as well as the sentences imposed on the match officials. [note: 5]

28 Three grounds are raised in support of the above proposition. First, no harm resulted from Ding's actions. No match was fixed or even agreed to be fixed; accordingly Singapore's reputation has not been damaged. [note: 6]

29 Second, Ding's culpability is on the low end of the scale. The match officials were the ones who solicited the services of the social escorts. If PW1 had not asked for "girls", the circumstances that gave rise to the charges against Ding would not have arisen. [note: 7] Moreover, the sexual services provided by the social escorts were solicited by the match officials themselves. Ding had not expressly offered the social escorts' sexual services to them. [note: 8]

30 Third, Ding did not benefit from his actions. [note: 9]

Prosecution's submissions

31 In the court below, the prosecution sought a sentence of 2 to 3 years' imprisonment per charge. At the hearing before me, the prosecution makes clear that they are seeking a sentence of 3 years per charge. The prosecution also maintains that an additional fine of $40,000 to $100,000 for each charge would be appropriate. In summary, the prosecution is seeking an aggregate sentence of 6 years' imprisonment plus a fine of $120,000 to $300,000.

32 The prosecution submits that the trial judge erred in the following ways: [note: 10]

(a) by failing to find that Ding was a member of a large international match-fixing syndicate;

(b) by failing to give due weight to the fact that the case presented the highest degree of syndication in match-fixing in Singapore to date;

(c) by failing to find that Ding played a major role in the match-fixing syndicate when his role was critical to the operation of the syndicate;

(d) by failing to consider or sufficiently consider Ding's lack of remorse;

(e) by according undue weight to the fact that Ding's offence did not actually result in a match being fixed;

(f) by failing to accord due weight to the distinguishing factors between the present case and local match-fixing precedents; and

(g) by failing to appreciate that the imposition of additional fines in this case is a necessary response to the profitability of match-fixing offences.

33 The prosecution also submits that the precedents represent outdated sentencing norms that

ought to be reappraised.

Relevant sentencing principles

Deterrence

34 General deterrence is the dominant sentencing consideration when it comes to match-fixing offences. This was clearly stated by Chan Sek Keong CJ in *Zhao Zhipeng v Public Prosecutor* [2008] 4 SLR(R) 879 ("*Zhao Zhipeng*") at [28]:

> I endorse the approach that deterrence is the most appropriate and therefore the dominant sentencing principle in match-fixing offences. In my view, it is particularly appropriate in the context of match-fixing in the S.League, as I will elaborate in [30] to [32] below. In many corruption cases, the need for specific deterrence may be absent, depending on the role of the defendant, his culpability and the social harm that might be caused. In the present case, for instance, the appellant will not be able to offend again in Singapore as he will be repatriated to China. He might not even be able to re-offend in China if he is banned from playing professional football because of his conviction here. *Nevertheless, there is clearly a need to impose a sentence which would act as a general deterrence against corruption in football games in Singapore*. [emphasis added]

35 Chan CJ also stated in *Zhao Zhipeng* at [33] and [34] that, as a result of the internationalisation of the S.League, there is a greater public interest in deterring match-fixing offences as it could damage Singapore's international reputation, in particular, in the context of our country's drive to be a prime venue for prestigious international sporting events. While his comments were made in the context of match-fixing within Singapore, they are in my view also applicable to match-fixing activities that originate in Singapore for matches that occur outside our national boundaries. I am not surprised if betting operations in Singapore are not restricted to matches that take place in Singapore, and those matches outside Singapore have more following and betting interest. I note that it was PW1's evidence that he understood that after the provision of the free sexual services, Ding would definitely want PW1 to fix future AFC Champions League matches that he would be officiating. [note: 11]

36 I agree that general deterrence is the dominant sentencing principle in match-fixing cases. The harm of match-fixing is multi-fold. Sport is one of the best and most popular expressions of human excellence. A good sportsman is not merely a good athlete but one who exercises the virtues of good sportsmanship. All might be fair in love and war, but in sport one must play by the rules. Anything achieved in a sporting endeavour by foul means is no achievement at all. Accordingly, there is no legitimacy in an organised sport that does not uphold the cardinal virtue of fair play. As Hein Verbruggen, President of SportAccord (the umbrella organisation for 105 sports federations) stated: [note: 12]

> *Integrity in sport is our most important commodity.* Fans must believe what they see on the field of play represents a true test of the competitors' skills. If they cannot, there is a real risk that they will ignore the sport and take sponsors and broadcasters with them. [emphasis added]

37 In the present case, the sport concerned is football, and the social, recreational and economic value of the sport was recognised in *Zhao Zhipeng* at [30]. The global appeal of football needs no elucidation. One merely needs to flip to the sports section of any newspaper or turn on the television. Accordingly, the corruption of sport in general and football in particular is the undermining of a public good.

38 There are also those whose interest in sport is of a more pecuniary nature – namely, those who bet on the results of games. Match-fixing, as the prosecution rightly characterises it, is a form of betting fraud. Even here, the concept of fairness comes to the fore – match-fixers exploit their unlawful foreknowledge of the results to gain an unfair advantage over the bettors who play by the rules. It is important not to make the mistake of comparing such activities to "simple theft". As noted in Chris Eaton, "Government action on match-fixing" (2013) 1(2) ICSS Journal 36 at p 38:

> International betting fraud is not a simple theft. It is sophisticated, technical and disguised criminal cheating and fraud on a truly global scale. It is the vulnerability of international betting to large-scale theft that inspires and pays for modern match-fixing. It is also a cash bonanza for the criminal organisations that are seeking to take control of both match-fixing and betting fraud.

39 It is clear that match-fixing is the practice of deceit on multiple levels. It robs from the participants the glory of true sporting achievement, it denies the viewers from witnessing an authentic spectacle and it distorts the betting markets for illegal gain.

40 Match-fixing is not a localised problem but one that transcends national boundaries. Enforcement bodies, bound as they are by territorial limits, are constrained in their efforts to defeat criminal syndicates that operate across multiple jurisdictions. As the territorial scourge of match-fixing has expanded, so has its profitability. Technological advances have made such offences harder to detect and prosecute. The facts of the present case illustrate this. Indeed, Ding himself employed a high level of "Operational Security", to borrow the trial judge's term.

41 Related to the internationalisation of match-fixing is the harm that is caused to Singapore's reputation by such activities – a point, as I have noted at [35] above, which was recognised in *Zhao Zhipeng* as another factor that reinforces the need for general deterrence. The public interest in preventing the image of Singapore from being tarnished was also raised by Yong Pung How CJ in *Kannan s/o Kunjiraman and another v Public Prosecutor* [1995] 3 SLR(R) 294 ("*Kannan v PP*") at [24].

42 Unfortunately, there are clear indications from various statements and news reports tendered by the prosecution that Singapore has in recent years acquired "an insalubrious reputation as a haven for match-fixers". [note: 13] The prosecution has emphasised that it is not saying that Singaporean enforcement agencies have been remiss in their attempts to stamp out such activities. What it means is that, despite the enforcement agencies' tireless efforts, offences of this nature are not just hard to detect but difficult to prove with admissible evidence or credible witnesses in a court of law. [note: 14] For completeness, Ding's counsel submits that just as there are comments from various corners that Singapore is not doing enough, so too are there people who say Singapore is a harsh country. I do not think that the reports demonstrating the damage to Singapore's reputation can be so easily brushed aside.

43 Finally, the prosecution reiterates the point raised in *Zhao Zhipeng* that match-fixing hurts Singapore's drive to be a prime venue for prestigious international sporting events. Although more than six years have passed since the judgment in *Zhao Zhipeng*, the sentiments expressed by Chan CJ remain true today. The prosecution cites other examples of Singapore's continuing ambition in this respect, including the continued hosting of the Formula One Grand Prix. Investment of hundreds of millions of dollars in building the Sports Hub, which is now up and running, further demonstrates the seriousness with which Singapore is pursuing its goal of becoming a prime international sporting venue. The economic repercussions for not severely curtailing match-fixing in Singapore are therefore all too apparent.

44 There is ample reason, therefore, for general deterrence to be the primary consideration in sentencing persons who play a role in match-fixing, and this is particularly acute in instances where there is a cross-border element to the offence.

45 For completeness, I note that the issue of specific deterrence was absent in *Zhao Zhipeng* for the reasons stated in the citation at [34] above. Here, Ding is a Singaporean and there is every possibility that he can re-offend, whether in Singapore or overseas. His offences are clearly premeditated, and in such circumstances, specific deterrence is an appropriate consideration: see *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [22].

Retribution

46 The prosecution argues that retribution also features as a key sentencing consideration because of the seriousness of the offence, as determined by two factors, namely, the extent of the offender's culpability and the degree of harmfulness of the conduct. [note: 15] I do not think this can be seriously disputed. The harm that results from match-fixing offences has been sufficiently explicated above and I need not repeat myself. Clearly, the punishment must reflect the gravity of the offence, and the present offences are certainly serious ones.

Whether sentencing norms for match-fixing offences should be recalibrated upwards

47 This is an appropriate juncture to consider the prosecution's submissions that the sentencing norms for match-fixing offences should be recalibrated upwards. In a speech at the 11th Subordinate Courts Workplan in 2002, Yong CJ issued a timely reminder for the need to constantly review and adjust the sentencing framework for benchmark sentences to keep abreast with changing times and moral trends. [note: 16] In other words, sentencing benchmarks are *not* set in stone – the courts must constantly be alive to changing circumstances. While the interests of parity and consistency require that there must be good and considered reasons for an increase, or for that matter, a decrease, in the sentencing benchmarks, the courts have not shied away from making necessary adjustments when the circumstances merit it.

48 A recent example of this being done is the case of *Public Prosecutor v Yue Liangfu* (Magistrate Arrest Case No 4821/2013 (unreported)), where Senior District Judge See Kee Oon (as he then was) prescribed a starting benchmark of 9 months' imprisonment for cases involving theft committed on board Singapore-controlled aircraft. In his brief grounds of decision, the Senior District Judge noted that the sentences passed in similar cases dealt with in 2013 had generally ranged from 6 to 12 weeks' imprisonment. His reasons for raising the sentencing benchmark included the difficulty of detection and prosecution, the real likelihood that such criminal conduct may be linked to organised crime syndicates, and also the increasing prevalence for such offences.

49 The prosecution also puts forward the somewhat commonsensical proposition that to deter a would-be offender, the "expected costs" of the offence must exceed the "expected benefits". The prosecution further explains its proposition by using the following formula:

Expected costs		**Expected benefits**
Chances of being arrested and successfully prosecuted (A)		Chances of successfully committing the crime (C)
X	**>**	X

Punishment imposed (B) Benefits derived from the crime (D)

To be clear, I do not think the prosecution is saying that the optimal sentence for any individual offender can be derived by plugging in a set of numbers to the above formula in a mechanical fashion. Given the form that the formula takes, it is in any event inherently impossible to obtain a useable value for the punishment to be imposed. The formula – which only really considers what factors are necessary to deter a rational offender – does not capture all the nuances involved in sentencing any offender, which may often engage considerations other than general deterrence. The assumption of a certain level of rationality on the part of the offender also implies that the formula may be more relevant to crimes of intention, especially if planning is involved, and to demonstrate generally the correlation or interplay between the relative degree of punishment to be imposed for effective general deterrence as against the probabilities of arrest and eventual conviction and the probabilities of getting the benefits derived from the crime. I accept that the formula is useful to show that the appropriate punishment to be imposed (B) is directly proportional to elements (C) and (D) and inversely proportional to element (A). Quite simply, when an offence becomes harder to detect, easier to commit or more lucrative, the court ought to adjust the punishment upwards to ensure that the element of deterrence is properly maintained.

50 The prosecution has demonstrated that in the last decade all the elements (A), (C) and (D) have all shifted for match-fixing, and in particular football match-fixing, thereby justifying a reassessment of the appropriate sentencing benchmark (B).

51 There have been statements made by Deputy Prime Minister and Minister for Home Affairs, Mr Teo Chee Hean, relating to the difficulty of detecting these crimes. Mr Teo discussed some of the difficulties that hamper enforcement efforts – the fact that some of these activities are conducted outside Singapore, the fact that criminal syndicates have structures that are complex and layered, with networks that span multiple countries, as well as the fact that such match-fixers are "quick to adapt their operations to evade detection" (*Singapore Parliamentary Debates, Official Report* (21 October 2013) vol 90).

52 The difficulty of detection is also exacerbated by the availability of more modern technology and the advent of online betting, which results in increased anonymity, a point which the trial judge had taken into account (see [22] above).

53 Further, the transnational nature of such offences also results in additional hurdles to the prosecution of offenders. For example, there is an additional difficulty in securing witnesses willing to cooperate and testify against such offenders, a point which was made by the Second Minister for Home Affairs Mr S Iswaran in Parliament (*Singapore Parliamentary Debates, Official Report* (11 November 2013) vol 90).

54 The increasing prevalence of match-fixing is another factor to be taken into account. The prosecution argues that, considering the transnational nature and cross-border effects of match-fixing today, it is necessary not only to consider local crime statistics but also the *global* prevalence of the offence. I agree. The global impact of match-fixing can be seen from the results of an investigation led by Europol and several European countries from July 2011 to January 2013, which found that there were attempts to fix more than 380 professional football matches involving 425 match officials, club officials, players and criminals from more than 15 countries. Worryingly, the report also stated that there is evidence that 150 of these cases and the operations were run out of Singapore with bribes up to 100,000 euros paid per match.

55 The increasing prevalence of match-fixing is a consequence of the increasing scale of profitability of the offence. In this regard, the prosecution refers to comments made by Mr Ronald Noble, the Secretary General of Interpol, in a speech given on 17 January 2013 titled "Match-Fixing: the ugly side of the beautiful game". Mr Noble noted that the reason why match-fixing has become so pervasive is money. Illegal betting encompasses a market that is said to be in the range of hundreds of billions of euros per year, with estimates that large bookmakers have revenues on the same scale as the Coca Cola company.

56 With regard to the appropriate benchmark sentence, the prosecution states that the highest sentence for an individual charge imposed on a match-fixer (disregarding offences with aggravating factors unique to that particular offender) is 18 months' imprisonment. In its written submissions on sentence, the prosecution argues that the starting point ought to be higher than that, and submitted that the starting point should be 2 years per charge. [note: 17] It is clear from the context of the submissions that the prosecution makes a clear distinction between a match-fixer as opposed to those involved in the game (who would typically be the recipient of the bribe). The latter category may require different sentencing considerations. I emphasise that in this judgment, I am only concerned with the appropriate sentencing benchmarks for a match-fixer like Ding, as opposed to match officials like PW1, for example.

57 In summary, the prosecution has put forward a well-researched and convincing case for its appeal against the leniency of the sentence. I agree with the prosecution that the sentencing norms must be re-assessed in light of the increased lucrativeness and anonymity of match-fixing offences as well as the increased potential for reputational harm to Singapore. A sharp upward recalibration is timely and merited.

58 Under the present circumstances, an appropriate guideline sentence in my view is 3½ years' imprisonment for an offence of bribing players, referees, other football officials or any other persons in order to fix football matches at the FIFA World Cup level committed by a fairly seasoned match-fixer, who is facing the law for the first time for the offence (*ie*, he is not one who is apprehended at his very first attempt at match-fixing), who appears to be a member of an organised syndicate and who is convicted after a full trial. If relevant mitigating circumstances exist (*eg*, full cooperation with investigations, provision of useful intelligence information leading to the arrest of other syndicate members, plea of guilty at the first available opportunity, a novice match-fixer, not part of any syndicate, who is caught at this very first attempt at match-fixing), or if relevant aggravating circumstances exist (*eg*, similar previous convictions of match-fixing exist, many charges taken into consideration for the purposes of sentencing, the offender belongs to the top echelons of a criminal match-fixing syndicate), they will have to be considered in the context of the sentencing framework provided as a guide to determine the appropriate sentence to be imposed for each of the charges proceeded with, having regard to all the circumstances of the particular case. The guideline sentencing framework can be found at Annex A of this judgment.

59 If it is instead a case of fixing a football match at the S.League level (as opposed to that at the FIFA World Cup level), and assuming other basic facts are unchanged, the appropriate guideline sentence may be reduced from 3½ years' to 1½ years' imprisonment, having regard to the fact that the S.League is many notches below the FIFA World Cup in all respects. I believe these new benchmark sentences are sufficiently severe to ensure that a match-fixer will find the stiff imprisonment term to be so unattractive that he will think very hard before he is enticed by the lucrative monetary gains to commit his next bribery offence, thinking that he can still get away with it because the risk of getting caught is extremely small.

Application to the facts

Harm caused by Ding's actions

60 Ding's counsel contends that no harm was caused by Ding's actions because no particular match was fixed or even agreed to be fixed. In particular, Ding's counsel argues that no damage was caused to Singapore's reputation. This argument is plainly unsustainable. The very fact that Ding had attempted to corrupt a number of foreign match officials who officiate international matches would no doubt reinforce the unfortunate global perception of Singapore as a haven for match-fixing. As the prosecution argues, the harm to Singapore's reputation is increased "when a Singaporean offender is seen to export corruption in sport beyond our shores". [note: 18] The trial judge was right to take the damage to Singapore's reputation and image into consideration as the nation's international reputation and standing must be jealously safeguarded at all times.

61 Nevertheless, the trial judge is also not wrong to have said that the fact that no match was fixed is a relevant consideration. Even so, the impact of this factor must be carefully considered. Take for example a situation where no match was fixed because the person who was bribed had second thoughts, or was prevented from doing so through the timely intervention of an enforcement agency. In the present case, the fact that no match was fixed was due to the vigilance and effectiveness of the officers from the Corrupt Practices Investigation Bureau ("CPIB"). This is not something that Ding deserves any credit for. In such circumstances, little weight should be placed on the fact that no match was actually fixed.

62 The prosecution also emphasises the point that Ding had bribed match officials, who have relatively more control over the game as opposed to players [note: 19] and hence, the potential harm is greater. I note, however, that this assertion is not entirely supported by the article the prosecution relies on, which also noted that referees are often, unwittingly, unable to deliver a successful fix (Kevin Carpenter, "Match-Fixing – The Biggest Threat to Sport in the 21st Century" [2012] 2 ISLR 13 at 16). While the perception that referees have more control explains why referees are prime targets for match-fixers, I am not prepared to say that corrupting match officials such as referees and assistant referees *per se* would lead to greater harm or even a higher chance of a match being fixed than bribing the other persons involved in the sport, such as players, coaches, agents, club owners and so on.

63 In any event, even if no loss or damage is actually sustained to any *particular* party, this factor takes a backseat when an overriding public interest is involved. As Yong CJ noted in *Public Prosecutor v Ng Tai Tee Janet and another* [2000] 3 SLR(R) 735 ("*Ng Tai Tee*") at [28]:

> In the proceedings before me, counsel for the respondents belaboured the point that no actual harm or loss was suffered by any party and that the respondents believed that they had not caused anyone to suffer. This argument was in my view, misconceived. *When considerations of public interests were implicated, these factors were of less relevance or importance. The loss or damage sustained was of an intangible nature and the ultimate victim was the State.* In any case, an act had in fact taken place in consequence of the abetment, the principal offence was not completed only due to the alertness of the SATS officer. The respondents were certainly not entitled to claim any credit for this. [emphasis added]

Ding not benefiting from the corrupt transactions

64 Ding's counsel also asserts that the fact that Ding did not benefit from the corrupt transactions (because no match was fixed) was a point in Ding's favour. While there is no evidence Ding made any money as a result of his present offences, the fact that he did not make a financial gain from an

illegal transaction is of little mitigating weight (*Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [3]).

65 While Ding did not profit by his offence, the trial judge rightly took into account the fact that Ding was *motivated* by the prospect of financial gain, which is a recognised aggravating factor. As noted in *Zhao Zhipeng* at [37], "[p]ersons who act out of pure self-interest and greed will rarely be treated with much sympathy".

Whether Ding or the match officials solicited the gratification

66 Ding's counsel argues that it was the match officials who solicited the services of the social escorts. Ding merely provided the social escorts after the match officials had asked for them.

67 For the proposition that the person who *solicits* the gratification is more culpable than the person who provides the gratification, Ding's counsel refers to the case of *Public Prosecutor v Zhong Xiaoqin* [2010] SGDC 80 ("*Zhong Xiaoqin*"). In that case, the accused was a worker at a massage parlour who bribed a police officer using sex and money to induce the latter to provide her with tip offs of impending raids on her massage establishment. The accused pleaded guilty to, *inter alia*, five charges under s 6(b) of the PCA. The police officer pleaded guilty to five charges under s 6(a) of the PCA, receiving 10 months' imprisonment per charge, with three to run consecutively. His total sentence was 30 months imprisonment, with a penalty of $7,000. The accused's counsel had argued that she ought to face a sentence lower than that imposed on the police officer.

68 With respect to the relative culpability between the accused and the police officer, the District Judge stated in *Zhong Xiaoqin* at [14]:

> … I noted that it was the Accused who initiated contact with Ong – she called him, arranged to meet him, and then offered the gratifications by way of money and sexual favours. There was no indication that Ong solicited any of this or pressured the Accused into giving the gratification. Further, Ong in fact tipped-off the Accused on two occasions, such that she kept her massage establishment closed on one occasion so that no raid could be effected, and was aware of the raid on the other. The Accused thus benefitted from the gratification which she gave to Ong, and his tip-offs clearly involved a compromise of duty on his part, resulting in an interference with the proper administration of justice.

69 At the next paragraph, it was stated:

> I thus saw no reason why the Accused should be treated any less severely than Ong. *In fact, as the initiator of the corrupt transactions, she offered the gratification to serve her own ends and pervert the course of justice. Her culpability could thus be perceived as greater than Ong's.* … [emphasis added]

70 On the facts, the District Judge in *Zhong Xiaoqin* decided that the culpability of the accused and the police officer on the PCA offences were not appreciably different. The District Judge therefore sentenced her to 10 months' imprisonment on each of the five proceeded PCA charges that she faced. Three of those terms, as well as another imprisonment term of 4 months for one of the unrelated charges she faced, were ordered to run consecutively. The total sentence was therefore 34 months' imprisonment.

71 *Zhong Xiaoqin* does not assist Ding's case – in fact, it undermined it. The assertion that it was actually the match officials who solicited the gratification was based on a microscopic and

inappropriate way of looking at what actually transpired. It is clear that Ding *initiated* the corrupt transactions. True, it was PW1 who first mentioned girls, but it is also true that it was Ding who first sought out PW1. It was Ding who attempted to cultivate PW1 over a period of time. It was Ding who told PW1 that he must "take care" of him. It was only then that PW1 asked Ding to "find some girls". The prosecution aptly characterises Ding's actions and his words as a "standing offer" of some kind of gratification, even if the exact *form* had not been decided. [note: 20] Indeed, the facts show a high level of premeditation and sophistication on the part of Ding. The use of sophisticated methods to avoid detection also shows that the offences were carefully planned.

72 Further, Ding's counsel also asserts that it ought to weigh in Ding's favour that Ding had not *expressly* offered the social escorts' sexual services to the match officials. The match officials were the ones who initiated the sexual acts with the social escorts. Quite simply, I am unable to see why Ding ought to be given any credit at all for this point. As the trial judge had found, the provision of sexual services was part of the "outside job" that the social escorts were engaged to do. I very much doubt that Ding had any illusions as to why the match officials were interested in "girls", at such a late hour in the night.

Whether Ding was a member of a large international syndicate

73 To begin, the prosecution takes issue with the trial judge's statement that "simply attaching a label of 'syndicate member' to an offender is not a sufficient reason to enhance the sentence" (the GD at [118]). If the trial judge was saying that being part of a syndicate is not in itself an aggravating factor, this is incorrect. In *Ng Tai Tee* at [25], Yong CJ held that the fact that there was sufficient evidence to infer that the accused in that case had colluded with the activities of an organised criminal syndicate was an aggravating factor to be taken into account when determining the duration of the sentence. In *Ong Tiong Poh v Public Prosecutor* [1998] 2 SLR(R) 547 at [30], Yong CJ also took into account for sentencing the fact that the appellant appeared to be "part of a sophisticated syndicate, capable of committing credit card fraud on a large scale and skilled at avoiding detection". More recently, Sundaresh Menon CJ also reiterated that the fact an offender commits an offence as part of a syndicate is an established aggravating factor that may justify an enhanced sentence in the interest of general deterrence: *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 at [31].

74 As for the finding by the trial judge that it had not been proved beyond a reasonable doubt that Ding was a member of a large international criminal syndicate that operates on the scale described by the media reports referred to by the prosecution (the GD at [118]), the prosecution argues that there is evidence that Ding was involved in the match-fixing syndicate run by one Dan Tan. When an article named one Dan Tan as being heavily involved in fixing matches in Europe together with Wilson Raj Perumal, Ding sent an anonymous email to a journalist employed by The New Paper claiming that Dan Tan was not involved in match-fixing at all. [note: 21] While this is undoubtedly a highly suspicious act pointing to a link between Ding and the syndicate purportedly headed by Dan Tan, I am not prepared to overturn the trial judge's finding of fact on this point.

75 Nevertheless, I accept that the syndicate that Ding was involved in was operating on a large scale. The prosecution highlights the evidence that Ding had flown to Beirut, Lebanon to meet PW1. [note: 22] The prosecution reiterates the fact that he was looking to corrupt FIFA referees who were responsible for officiating international matches when previous cases related to local league matches or matches with Malaysian teams. [note: 23] Ding also made references to a "company" in his discussions with PW1 and also made use of conduits to conduct his activities, such as in obtaining the social escorts for the match officials. Ding's assertion to PW1 that "this business give better

money in 1 year more than you be AFC referees for 10 years" was another indicator of the financial strength of the organisation he was working for.

76 While the trial judge did take at least some of these factors into account (see [120] of the GD), I think he was too cautious in finding that Ding was merely part of an organised group. There is sufficient evidence for the inference that Ding was a member of a match-fixing syndicate and that the sophistication, size and geographical reach of the syndicate must have been extensive, if not necessarily on the same scale as the one reportedly headed by Dan Tan.

77 The prosecution also takes issue with the trial judge's finding that Ding did not play a "major role" in the syndicate. [note: 24] The facts amply demonstrate that Ding was no mere errand boy, but, effectively, the frontman of at least part of the organisation. Perhaps the trial judge meant that he was not the mastermind of the syndicate. Nevertheless, as a significant player in a large syndicate with undoubted international reach and ambition, his level of culpability must be considered a very serious one.

Parity with the match officials

78 An important element of Ding's arguments relate to the point that the sentence imposed by the trial judge on Ding was far heavier than those given to the match officials.

79 The starting point is that the giver and recipient of the gratification ought to be given similar sentences, except where one party is more culpable than the other. In *Chua Tiong Tiong v Public Prosecutor* [2001] 2 SLR(R) 515, Yong CJ had stated as follows (at [21]):

> … in most cases the giver of gratification bears equal culpability to that of the receiver. Sentences meted out should therefore be similar in terms. There are cases where a giver will not warrant a similar punishment as that of the receiver, such as when a giver was under compulsion or some form of pressure to give. In that situation, it is reasonable to punish the receiver more harshly than the giver. Conversely, there are instances where a giver bears equal, if not more, culpability than the receiver, and this is when the giver intends to corrupt the establishment of law and order for his private gain, and/or gives or offers bribes to pervert the course of justice. In these cases, the giver deserves more punishment. In my view, the appellant fell squarely into the latter category.

80 The principle of parity of sentencing in the context of corruption cases was also recently considered by Menon CJ in *Public Prosecutor v Marzuki bin Ahmad and another appeal* [2014] 4 SLR 623 ("*Marzuki*"). He said that the principle of parity "contemplates that unless there is good reason for doing so, the court, in sentencing a party to a corrupt transaction, should not depart from the sentence imposed on his counterparty in the same transaction" (*Marzuki* at [39]). However, the "principle of parity of sentencing as between the giver and the recipient of gratification cannot be viewed or applied as an inflexible and rigid rule" (*Marzuki* at [45]).

81 In my view, the trial judge was quite right to have found that Ding's individual culpability makes his offence more serious than that of the match officials (the GD at [123]).

82 While the match officials of course have a duty to be fair and impartial by dint of their positions in the sport, this does not automatically mean that they are necessarily more culpable than the match-fixer himself, and indeed, it is likely that in the real world the *opposite* is often the case. In the present case, the targets of Ding's bribes were lowly paid match officials. It has been noted by Prof Jack Anderson that transnational organised crime syndicates target young athletes who are

vulnerable to being "groomed" as "gambling mules" for future criminally-related betting scams (Jack Anderson, "Match Fixing and Money Laundering" (2014) Queen's University Belfast, School of Law, Research Paper No 2014-05 <http://ssrn.com/abstract=2424755> at p 9). This is, indeed, a consistent *modus operandi* of match-fixers – they "operate where protections are at their weakest; they actively seek out the vulnerable and exploit them, whether they are associations, confederations or individuals" (Terry Steans, "How matches are fixed" (2013) 1(2) ICSS Journal 18 at p 21). Ding's activities demonstrate this. He knew the poorly paid match officials were vulnerable to temptation and he had deliberately made use of their weaknesses to further his own criminal ends and that of the match-fixing syndicate that he is a part of.

83 I also take into account the comments made by Ralf Mutschke, FIFA's director of security, who had emphasised the need for governments to take a tougher stance on match-fixers as opposed to those involved in the game because match-fixers do not face the same consequences that players and referees do ("FIFA: Governments must help in match-fixing fight", *CNN* (6 February 2013) <http://edition.cnn.com/2013/02/05/sport/football/fifa-match-fixing-liverpool-debrecen-football>). [note: 25] In other words, match officials and players risk their careers and livelihoods by engaging in match-fixing activities, but no such sanction can be extended to match-fixers, who are outside the game. In this regard, I do not express any sympathy for the fact that match officials may face additional sanctions. Rather, I am concerned first and foremost with the need for deterrence and hence, the question of expected risk versus expected reward comes to the fore. Not only do match-fixers (who operate in the shadows) run lower risks than referees, who may potentially expose themselves with every suspicious call before a global audience, match-fixers also enjoy much higher potential profits as compared to the match officials themselves.

84 There are various other differentiating factors, including the fact that Ding was the person who initiated the corrupt transactions as well as his major role in the large syndicate that he is a part of. I also note that the match officials had pleaded guilty while Ding had claimed trial and shown little remorse throughout. The prosecution further submits that, unlike for Ding, specific deterrence would not be a consideration in the sentencing of the match officials since they will not be able to return to Singapore to repeat the offence, and moreover, they were also sanctioned with bans by AFC, which is another distinguishing factor that I do take into account.

85 Accordingly, there is no reason why Ding's sentence should be on par with those imposed on the match officials.

Parity with sentencing precedents

86 While there have been a number of cases relating to match-fixing in the past, I agree with the prosecution that the most appropriate authorities are those that actually deal with match-fixers themselves.

87 In *Kannan v PP*, the first appellant ("Kannan") was convicted of engaging in a conspiracy with one Rajendran s/o R Kurusamy ("Rajendran") and the second appellant Ong Kheng Hock ("Ong") to bribe David Lee ("Lee"), who was then Singapore's national goalkeeper, to let in goals during a match. Rajendran was an admitted bookmaker. Kannan was an ex-national player and a committee member of a local football club. Ong was the president of the same club.

88 Rajendran managed to convince Kannan to speak to Ong to ask Ong to offer a bribe to Lee. In fact, Ong never spoke to Lee about the bribe at all. Lee was therefore not implicated in the offence. However, at the football match, Lee let in a goal in the normal course of play. Nevertheless, Rajendran got the erroneous impression that the goal was conceded because of the fix. Rajendran

gave Kannan $5,000 as a reward for arranging the bribe as well as $80,000 to hand over to Ong, who was to pass that money to Lee. Ong pocketed the money instead.

89 Kannan was sentenced to 1 year's imprisonment and fined $40,000 for conspiracy to corruptly offer gratification of $80,000 to Lee. He was also sentenced to 18 months' imprisonment and ordered to pay a penalty of $5,000 for corruptly receiving from Rajendran a gratification of $5,000. Yong CJ upheld the sentences and noted that, it was to no credit of Kannan that the bribe never reached Lee (and therefore no match was fixed).

90 In the case of *Rajendran s/o Kurusamy and others v Public Prosecutor* [1998] 2 SLR(R) 814 ("*Rajendran v PP*"), the first offender was Rajendran (the same bookmaker implicated in *Kannan v PP*). The second offender, Ramadas s/o Eurulandi Sangelee ("Ramadas"), was one of Rajendran's runners. The third offender, Devaraj s/o Doraisamy ("Devaraj"), was a professional footballer. Under the first charge, Rajendran asked Maran s/o Jagannathan ("Maran"), another footballer, to arrange with his teammates to lose a game. Maran informed Devaraj of this arrangement. Maran received $38,000 from Ramadas through a friend of Maran. Subsequently, the team lost the match.

91 Under the second charge, Rajendran contacted Maran to ensure that another match would be lost by the same team by at least two clear goals. After some negotiation over the gratification, Maran approached Devaraj who agreed to help him. Maran received $3,000. Consequently the team lost by five goals to one.

92 The offenders were convicted on both charges, which convictions were upheld on appeal. With respect to Rajendran, Yong CJ considered that he was the most culpable of the three offenders as he had masterminded and planned the whole conspiracy of match-fixing for his own benefit. Yong CJ considered that the sentence imposed below – 6 months' imprisonment with a fine – was insufficient. Rajendran had antecedents in other countries, especially Malaysia. Yong CJ enhanced Rajendran's sentence to a total of 18 months' imprisonment, with 12 months' imprisonment for the first charge and 6 months' imprisonment for the second charge, and for both sentences to run consecutively.

93 In my view, the facts of the present case are more aggravated than those of the two precedents above. In *Kannan v PP*, the imprisonment term imposed on Kannan for his conviction on the charge of corruptly receiving from Rajendran a gratification of $5,000 as a reward for arranging the bribe to Lee was 18 months' imprisonment. There was no allegation that Kannan was a member of a syndicate. Even though the match to be fixed was a "FAM Premier League" match, the match that was intended to be thrown was a match by the Singapore national team and the player to be bribed was a Singaporean player. Kannan was also not the person who initiated the corrupt transactions. It is important to note that no match was actually fixed in this case as well.

94 Similarly, the level of syndication, the greater damage to Singapore's reputation due to the fact that Ding was seeking to corrupt match officials from far afield, and the degree of sophistication, and the planning and persistence demonstrated by Ding also distinguished the facts of the present case from *Rajendran v PP*.

95 The prosecution accepts the fact that the size of the bribes in *Kannan v PP* and *Rajendran v PP* were larger than in the present case. [note: 26] Nevertheless, the prosecution argues that this fact should not have a significant bearing on the sentence. First, the gratification in the present case is merely a "tantalising teaser", with a promise of greater rewards to come. Secondly, Ding's offences are "far more corrupt", both in terms of culpability and the nature of the harm caused.

96 I agree with the prosecution's submissions. I would also add that it is clear that Ding's *mens*

rea did not relate to merely fixing a single match. His intention at all times was to corrupt the match officials so that they would compromise future games at his bidding. While his planned activities were never carried out to fruition as a result of the swift actions of the CPIB officers, an intention to groom the targets to fix numerous future matches is significantly more serious than an intention to only fix a single match, which is essentially a "one-off" offence.

97 There are at least two clear pieces of evidence in relation to this. The first is the email with a list of YouTube videos. This is discussed at [13] to [16] above. It seems to me that Ding would hardly have bothered to go through the hassle of curating these videos to "educate" his targets on the various ways of ensuring a fixed result if all he wanted was just one match to be fixed.

98 An even clearer indication can be found in the email that Ding sent to PW1 which included the line "this business give better money in 1 year more than you be AFC referees for 10 years" (see [17] above). The trial judge had declined to reproduce the email for length, but an examination of the email in totality makes it even clearer that Ding contemplated a *continuing* corrupt relationship with his targets. Ding's vision is to be in the lucrative business of match-fixing for the long haul. I reproduce the relevant parts of the email below (the grammatical errors are found in the original):

> … For your questions: FIRST: You are right. We will not do jobs for all matches especially if there some reasons:
>
> 1. Problem with the referee assessor
>
> 2. No market for match (Lebanon domestic league we won't do job because no market)
>
> 3. Some bad people play market and make it bad for us (If anyone in the team talk to other people and they play our market, we will have problem and need to cancel the job)
>
> 4. Development with AFC (I agree that if some games is crucial and key to your position in AFC, we will not do job) Anyway, we will always discuss and plan before deciding to do job a not.
>
> … SECOND: Yes, you can stop do job anytime you want. There is no force or must do. Same for our company, if we think you cannot do job or do bad job --> we will also stop do job with you. Both you and our company can choose to stop anytime. But from our experience, nobody will stop unless you have BIG BIG problem with AFC because this business give better money in 1 year more than you be AFC referees for 10 years. All our friends now stay good house with drive good car and their family all good. We also partner our friends do business in their countries because you should know referee after 45 years old be difficult to find other jobs. Slowly you will understand what i mean about this and maybe you will know our company is better than how AFC take care you after you retire :-) …

99 PW1's reply to the email also demonstrates that PW1 understood Ding to mean that they would have a working relationship over a period of time (the email was originally written in all capitals, but I shall use normal capitalisation for readability): [note: 27]

> Dear my friend James thank you for this helpful and clear answers on some questions because this answers clarify the way for both of us and I mean also my team. Your answers are very good for us and you know that in the first there is some difficult and problems but we will make our best day by day *because everything in the beginning is difficult but it will be easier slowly and job after job*. We are waiting for you about new jobs and take care of yourself. … [emphasis added]

Applicability of prospective ruling

100 Before I turn to the appropriate sentence to be meted out to Ding, I will also deal with the question of whether it is appropriate to apply the new sentencing guideline framework for match-fixers that I have set out briefly at [57] above and in more detail at Annex A. To begin, I note that there is no fixed rule that, just because this sentencing guideline framework for match-fixing is "new", it cannot be applied to an offender who might have deliberately committed his offences in the expectation that the older, more lenient, sentencing guidelines would apply. As stated by Chan CJ in *Madhavan Peter v Public Prosecutor and other appeals* [2012] 4 SLR 613 ("*Madhavan Peter*") at [181]:

> 1 8 1 *In my view, there is no inflexible rule that current sentencing guidelines or principles cannot be applied to "old" offences in any circumstances.* Nevertheless, the general principle ought to be that an offender should not be punished more severely than other offenders who committed the same offence (or an offence falling within the same category of offences) before the implementation of new guidelines providing for heavier sentences for that offence (or that category of offences). This principle is fair and just, and gives equal protection of the law to offenders of equal or similar culpability. *If the sentencing norm for an offence is to be departed from to the detriment of the offender (eg, from a fine to imprisonment and/or caning), it should only be done in circumstances where specific or general deterrence is needed to check the rise of particular types of offences.* Even then, there is no reason why the courts should not, whenever possible, forewarn would-be offenders of the new sentencing guidelines or even benchmarks. Although it is not common, our courts have done this from time to time, *eg*, in *Panneerselvam s/o Arunasalam v Public Prosecutor* Magistrate's Appeal No 21 of 2008 (see Selina Lum, "Risk $3k fine for feeding monkeys" *The Straits Times* (7 May 2008)). [emphasis added]

101 More recently, the doctrine of prospective ruling was considered by the three-judge High Court in *Public Prosecutor v Hue An Li* [2014] 4 SLR 661 ("*Hue An Li*"). It was observed in *Hue An Li* that judicial pronouncements are, by default, *fully retroactive in nature*. However, the appellate courts (which includes the High Court sitting in its appellate capacity), have the discretion, in *exceptional circumstances*, to restrict the retroactive effect of their pronouncements. These factors include (at [124]):

> (a) The extent to which the law or legal principle concerned is entrenched: The more entrenched a law or legal principle is, the greater the need for any overruling of that law or legal principle to be prospective. This will be measured by, amongst other things, the position of the courts in the hierarchy that have adopted the law or legal principle that is to be overruled and the number of cases which have followed it. A pronouncement by our Court of Appeal which exhaustively analyses several disparate positions before coming to a single position on a point of law will be more entrenched than a passing pronouncement on that same point of law by a first-instance court. Similarly, a law or legal principle cited in a long line of cases is more entrenched than one cited in a smaller number of cases.
>
> (b) The extent of the change to the law: The greater the change to the law, the greater the need for prospective overruling. A wholesale revolutionary abandonment of a legal position (as was done in, for instance, *Manogaran* ([110] *supra*)) is a greater change than an evolutionary reframing of the law (see, for instance, *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193, which re-examined the distinction between interpretation and implication in contract law, but by and large built on the foundations laid down by prior cases).

(c) The extent to which the change to the law is foreseeable: The less foreseeable the change to the law, the greater the need for prospective overruling. In *SW v UK* ([113] *supra*), for example, the abolition of the doctrine of marital immunity was eminently foreseeable because of past judicial pronouncements which had expressed distaste for the doctrine and progressively expanded the exceptions to it. There was therefore no need to curtail the retroactive application of the change in the legal position.

(d) The extent of reliance on the law or legal principle concerned: The greater the reliance on the law or legal principle being overruled, the greater the need for prospective overruling. This factor is particularly compelling in the criminal law context, where a person's physical liberty is potentially at stake. Quite apart from Art 11(1) of the Singapore Constitution, a person who conducts his affairs in reliance on the ostensible legality of his actions would be unfairly taken by surprise if a retrospective change to the law were to expose him to criminal liability.

102 It was also stressed in *Hue An Li* at [125] that "no one factor is preponderant over any other, and no one factor is necessary before prospective overruling can be adopted in a particular case".

103 In my view, there are no *exceptional* circumstances that warrant the invocation of the doctrine of prospective ruling. The adjustments of the benchmarks in the present case cannot be said to be a revolutionary one. An imprisonment term is always on the cards. I give little weight to the expectations of an offender who deliberately flouts the law because the expected rewards of committing the crime would be greater than the expected cost of being caught, as a result of material changes in the circumstances. This is also not a case where the offender is doing something that he believed all along is legal but has become illegal subsequently because of a new judicial interpretation. I also do not think that this case has any similarity with one where the offenders had "pleaded guilty to or conducted their defences on the basis of advice that the starting point for sentencing in such cases would likely be only a fine" (see *Hue An Li* at [129]), or I would add, a light custodial sentence. As stated in *Madhavan Peter*, applying new sentencing guidelines to an "old" offender is merited if specific or general deterrence is needed to check the rise of particular types of offences. Such is clearly the situation here. A robust sentence is needed to check the rise of the scourge of match-fixing and to repair the reputational damage that has been caused to Singapore by the activities of match-fixers like Ding. I have no hesitation at all in applying the new sentencing guideline framework for match-fixing to Ding.

Appropriate sentence

104 Ding's counsel submits that a sentence of 18 months' imprisonment per charge (for a total term of 36 months' imprisonment) is disproportionate, having regard to the facts and circumstances of the case. For the reasons I have already set out, I do not think the individual terms or the total sentence imposed by trial judge is manifestly excessive at all. Instead, I am of the view that they are manifestly inadequate, especially after the new sentencing guideline framework is taken into account. Indeed, even if I am minded to apply the doctrine of prospective ruling, I would *still* have increased Ding's individual sentences on the basis that Ding's level of fault is higher than that of the offender Kannan in *Kannan v PP*, who received an imprisonment term of 18 months, as noted at [93] above.

105 Accordingly, I enhance Ding's sentence from 1½ years' imprisonment to 2½ years' imprisonment for each of the three charges, with two of the sentences (for DAC 11276/2013 and DAC 11277/2013) to run consecutively. The total sentence is therefore 5 years' imprisonment. If Ding was instead bribing referees with a view to fix football matches at the S.League level, I would have considered a sentence of about 1½ years' imprisonment per charge as shown by the left extreme end of the line marked "1st CT" in the graph in Annex A. If Ding had instead been caught bribing referees with a view

to fix football matches at the FIFA World Cup level, then I would be looking at the high end of about 3 ½ years' imprisonment per charge as indicated by the right extreme end of the same line. If the reputation of and level of interest in the AFC Champions League is taken to be at a level somewhere midway between the FIFA World Cup and the S.League, then perhaps I should be looking at a sentence in the region of about 2 ½ years' imprisonment per charge. The AFC Champions League probably falls more on the left half than the right half of the ranking scale with S.League on the left extreme end and the FIFA World Cup on the right extreme end of the scale. It seems that a sentence of 2 years' imprisonment per charge may be more appropriate because although the AFC Champions League is clearly not in the same league as the FIFA World Cup and other European football leagues and is more likely to fall on the left half of the scale, it is still several notches higher than the S.League.

106 This shows the kind of iterative reasoning processes and assessments that have to be made when using the sentencing guidelines framework in Annex A to aid in the sentencing process. As Ding appears to be a significant player fairly high up in the echelons of the syndicate with the ability to make decisions on who to bribe, the manner of bribery and what games are to be selected for match-fixing, his sentence must be increased appropriately. Ding seems to me to be determined to be in this unlawful match-fixing business for the long haul, and he has to be specifically deterred from continuing with it. I therefore add an additional imprisonment term of 6 months to each charge making it a total of 2½ years' imprisonment per charge. With the framework in Annex A as a guide and taking into account all the considerations that I have set out in this judgment, I am of the view that a sentence of 2½ years per charge is broadly fair and justifiable having regard to all the circumstances. There are no mitigating circumstances nor is there anything exceptional in Ding's case that merit a reduction of this sentence.

107 With the guideline sentences revised significantly upwards as shown by the graph at Annex A, current and future potential match-fixers are now forewarned of the heavy penal consequences that may visit them if they embark on or continue with their match-fixing business.

108 I now turn to the prosecution's submission that Ding should also be given an additional fine of $40,000 and $100,000 per charge. The prosecution essentially argues that a conjunctive fine should be imposed to ensure that match-fixing will always be a loss-making venture. [note: 28] In particular, the prosecution notes that in *Kannan v PP*, an additional fine of $40,000 was imposed on top of the custodial term in respect of the charge for conspiring to bribe Lee, even though Kannan did not profit from the conspiracy itself as the match was not fixed. However, I note that although no match was *actually* fixed in *Kannan v PP*, profits would have resulted nonetheless since Rajendran was happy with the outcome, even if this was only by chance.

109 As a general rule, the purpose of imposing a fine in addition to an imprisonment term is to disgorge the offender's substantial benefit from his offending. *Sentencing Practice in the Subordinate Courts* vol 1 (LexisNexis, 3rd Ed, 2013) at p 49 states:

> A fine may be combined with a term of imprisonment, where the maximum term of imprisonment is considered to be inadequate, or where it is used as a means of removing the offender's profit from his offending: see *Garner* (1987) 7 Cr App R(S) 285.

110 In the present case, there is no evidence that a match was actually fixed or that Ding benefited financially as a result of his present offences. The trial judge also noted that if the prosecution had evidence that Ding had acquired any property with the proceeds of other crimes, the prosecution could proceed against Ding under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA"). Section 5 of the PCA is listed

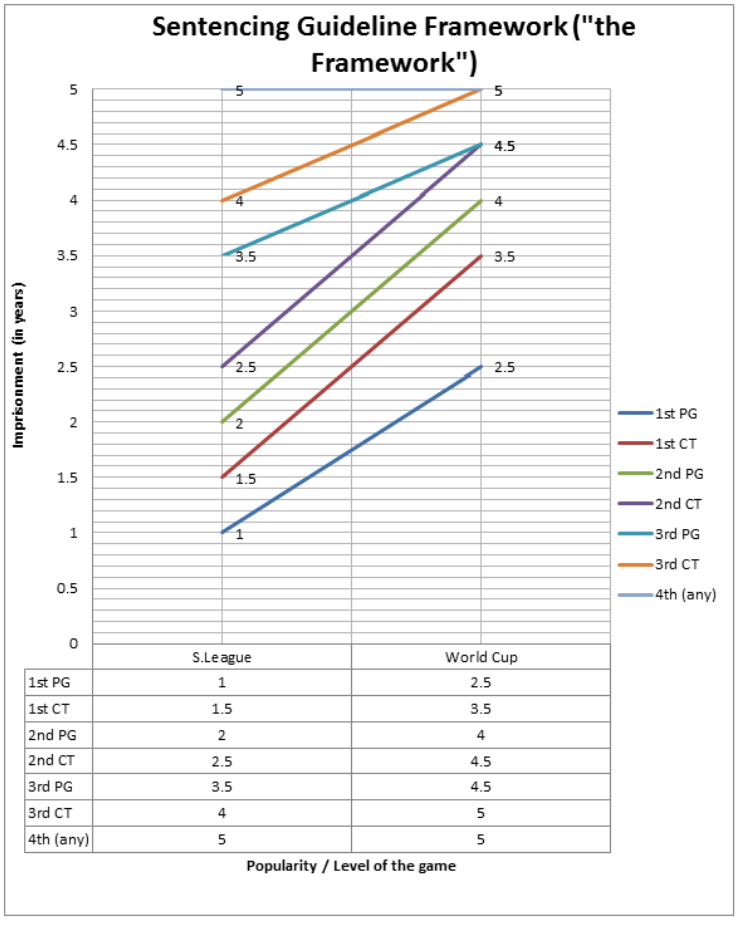
under the Second Schedule of the CDSA as a serious offence for which confiscation is a possible recourse.

111 After considering the matter, I am unable to say that the trial judge erred in law by failing to impose additional fines on Ding. I also note that the prosecution has conceded that the trial judge's finding is not inconsistent with the principles articulated in previous cases. [note: 29] While this should not be taken to mean that fines should never be imposed on match-fixers in appropriate circumstances even where no match is actually fixed and there is no evidence of direct or indirect financial gain on the part of an accused arising from the offences he is convicted of, nevertheless, I saw no good reason to disturb the trial judge's decision in this respect.

Conclusion

112 For the reasons above, I dismiss Ding's appeal with respect to sentence and allow the prosecution's cross-appeal. I enhance Ding's sentence to a total imprisonment term of 5 years as set out at [105] above as the sentence imposed by the trial judge of a total of 3 years' imprisonment is manifestly inadequate having regard to all the circumstances of this case.

ANNEX A



	S.League	World Cup
1st PG	1	2.5
1st CT	1.5	3.5
2nd PG	2	4
2nd CT	2.5	4.5
3rd PG	3.5	4.5
3rd CT	4	5
4th (any)	5	5

Introduction

1 This Annex sets out the sentencing guideline framework for football match-fixers who are convicted under s 5 of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) (the "Framework"). The guideline starting sentences are set out in the Framework above. What follows are the

explanatory notes for the Framework.

2 In these explanatory notes, I will deal with the following:

(a) The underlying factual assumptions that underlie the guideline sentences set out in the Framework.

(b) An explanation of how the Framework is to be used, with simple examples of application.

(c) Why the Framework was prepared as a graph, an explanation of my general approach in using a theoretical construct to formulate the guideline sentences used in the Framework, as well as the possibility of computerisation.

3 I begin by emphasising that I have provided the Framework to be a guide to determine the appropriate sentence to imposed, having regard to all the circumstances of the particular case. These non-binding guidelines should not be applied blindly. A sentencing judge must always compare the facts of the case before him with the assumptions in the Framework. It is intended to assist and not to fetter the discretion of the sentencing judge. The sentencing judge always has the flexibility to depart from the Framework, and it is not necessary for the sentencing judge to provide "good reasons" before he may do so. This includes even those cases where the facts of the case appear to be equivalent to the factual assumptions underlying the Framework, which I will now set out.

Underlying assumptions

4 All sentencing is determined in the context of a certain set of facts. Thus, it is necessary to begin by setting out the assumptions that underlie the guideline sentences set out in the Framework.

5 The first set of assumptions concerns certain facts about the offender at the time of the offence:

(a) First, the offender is assumed to be a member of an organised syndicate.

(b) Second, it is assumed that the offender is neither at the top nor at the bottom echelon of the syndicate.

(c) Third, the offender is assumed to be a *fairly seasoned match-fixer*. This is so even if, as it turns out, he is only facing the law for the first time (which will not be unusual because of the difficulty in detecting match-fixing activities). In other words, it is assumed that the offender has been involved in match-fixing activities on a regular basis *prior* to his present offences and that there is sufficient evidence to establish this fact. Thus, when I refer to the offender as a "first offender", I always mean a fairly seasoned match-fixer who has been convicted for the first time. In other words, the Framework does not assume that the offender is a true novice, who is so unlucky or incompetent that he is arrested on his very first attempt. The effect of previous convictions for match-fixing is taken into account in the various lines on the Framework. So if it is the first time that the offender is convicted of a match-fixing offence, the relevant sentencing graphs are the ones labelled "1st"; if it is the second time that the offender is convicted of a match-fixing offence, the relevant sentencing graphs are the ones labelled "2nd" (which feature higher guideline sentences); and so on.

6 It is also assumed that the offender (a) does not suffer from any medical conditions of a mitigating nature and/or which warrant the exercise of judicial mercy, and (b) is neither very young

nor very old (*ie*, his age is not a mitigating factor in issue).

7 I will refer to an offender having characteristics that fit all the above assumptions as a "standard offender".

8 Further, it is assumed that the global context surrounding match-fixing is the *same* as the circumstances prevailing at the time that this Framework was prepared (*ie*, in 2014). By this I am referring to those general, external circumstances which are not within the control of any single offender but which may have an overall impact on the sentence. These factors would include, for example, the state of football in Singapore as well as worldwide (such as the overall popularity of the game), the impact of match-fixing activities on Singapore's reputation, and the global impact of match-fixing activities generally. Such factors are to be taken into account, for example, when considering the need for general deterrence and the level of harm that may result from the offender's acts.

9 Another set of assumptions relates to the behaviour of the standard offender *after* his apprehension. The assumptions involve the offender's decision to claim trial or enter a plea of guilt, as well as certain relevant acts leading up to that decision. To take this into account, the lines in the Framework are divided into two categories: (a) for offenders who claim trial (these are marked with the letters "CT"), and (b) for offenders who plead guilty early (these are marked with the letters "PG"). I have distinguished the standard offender who pleads guilty early from one who claims trial because it is trite that an early plea of guilt can be taken into consideration in mitigating when it is motivated by genuine remorse, contriteness or regret and/or a desire to facilitate the administration of justice (*Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR 653 at [77]). I now set out some assumptions that are specific to the CT graphs and the PG graphs.

10 In the CT lines, it is assumed that (a) the offender has not cooperated with investigations or provided the enforcement agencies with useful intelligence information leading to the arrest of other syndicate members, and (b) he has not exhibited any remorse at any stage of the trial. For convenience, I will refer to the offender who claims trial as a "CT offender".

11 In the PG lines, it is assumed that the offender has pleaded guilty at the *first available opportunity*. I will refer to such an offender as a "PG offender". It is *not* assumed that the offender has in addition also fully cooperated with police investigations as well. Accordingly, a PG offender may deserve a better sentence than that indicated in the Framework if, *ceteris paribus*, he also fully cooperates with police investigations (such as by providing useful information on his accomplices and his syndicate), or provides the police with truthful statements from the very outset.

12 At this juncture, I will also highlight certain other factors which are not accounted for in this Framework. To begin, no assumption is made as to the value of the gratification that is provided by the match-fixer to the recipient. I note in *Public Prosecutor v Ang Seng Thor* [2011] 4 SLR 217 at [46]–[48], V K Rajah JA held that the value of gratification is relevant to both the sentencing of a giver of a bribe and the recipient of a bribe. His reasoning can be summarised as follows:

(a) First, the value of the gratification is linked to the harm caused by the offence. A greater corrupt influence is exerted on the receiver when the amount of the bribe is higher. Larger bribes tend to lead receivers into graver transgressions. Thus, the size of the bribe is assessed along with the importance of the transaction sought to be influenced.

(b) Secondly, the size of the bribe is relevant to the giver's culpability. It usually and equally reflects the level of influence or advantage the giver wishes to secure from the bribe, which in

turn normally reflects more personal gain sought by the giver. The *motivation* would ordinarily indicate a higher degree of culpability.

(c) Finally, an offender who is able to provide a large bribe is more likely to be a person of means, for whom a fine of up to $100,000 may be no more than a mere slap of the risk.

13 I do not disagree with Rajah JA that the size of the bribe is relevant in the sentencing process. Nevertheless, in assessing the harm and the culpability of the offender in match-fixing offences, a sentencing judge must be careful not to place an over-emphasis on the size of the bribe. Context is crucial. Certainly, the size of the bribe is always of *evidential value*, but care must be taken when it is used as a freestanding factor in the determination of the appropriate sentence. Ordinarily, a rational giver of a bribe will only want to provide the minimum amount necessary to compromise the recipient. Thus, in some cases, the size of the bribe might only be indicative of the appetite of the recipient. It will therefore not always be the case that the size of the bribe is reflective of the giver's culpability or the harm caused by the corrupt transaction. A person who bribes a starving man with a loaf of bread is not necessarily less culpable than a person who bribes a wealthy man with a new Ferrari. The resulting harm, too, is also not necessarily less. Similarly, the size of the bribe is indicative of, but not determinative of, the degree of culpability of the giver's corrupt intention.

14 As a result, an unthinking application of the idea that the blameworthiness of the giver is usually proportionate to the size of the bribe may in certain situations *understate* the giver's actual culpability, where the value of the gratification is relatively small. Where match-fixing is concerned, it stands to reason that that the bigger the fix, the more the match-fixer will likely have to pay to purchase the receiver's cooperation. However, a match-fixer might be able to compromise the receiver by way of a smaller bribe for numerous reasons. Perhaps the match-fixer just happens to have a special talent for persuasion. There is no reason why that match-fixer should be given a lighter sentence than another simply because the latter was a less competent haggler than him. On the other hand, where there is clear evidence relating to the giver's motive in relation to the illegitimate advantage sought, his expected gains and the likely harm that is likely to result from the corrupt transaction, a sentencing judge must also be careful that his or her assessment of the sentencing impact of the size of the gratification does not lead to *double counting*.

15 Similarly, no assumption is made as to the match-fixer's benefit (whether financial or otherwise) as a result of the bribe. Where there is evidence that the offender has profited by his crime, the sentencing judge will undoubtedly have to take this factor into account. In this respect, it will be appropriate for the sentencing judge to impose a stiff and deterrent fine in addition to a jail term. This is so even if the profits have been confiscated by other means.

Understanding the Framework

16 Having set out my assumptions, I now go on to explain how the Framework is to be understood.

17 In essence, the Framework is created by means of a theoretical construct. I first contemplate an offender who fits the factual assumptions that I have already set out. In this regard, I also assume that all other factors which are relevant in the sentencing of this standard offender would remain constant.

18 For each *individual line* in the Framework, the only variable to be considered is the football competition or league that the match-fixer is trying to fix. Thus, the x-axis of the Framework is labelled the "Popularity/Level of the game" to be fixed. It is intended to capture the whole spectrum of professional football competitions worldwide. For this purpose, I use the S.League as a starting

point and the FIFA World Cup as the ending point. I have chosen these two competitions because, without meaning any disrespect, it appears to me uncontroversial that the S.League presently falls on one extreme end of the spectrum while the FIFA World Cup falls on the other. Moreover, it does not appear that this very large gap is likely to narrow significantly in the foreseeable future.

19 I begin by considering the appropriate sentence to be meted out to a standard offender who has fixed an S.League match. What would be an appropriate sentence for a first offender (in the sense I have described at [5(c)] in this Annex above)? What if he has match-fixing convictions? What if he has pleaded guilty at the earliest opportunity? What if he claims trial? The answers to these questions form the *starting points* for the various lines in the Framework. The guideline sentences can be found in the data table at the bottom of the Framework. So for a first offender who pleads guilty, the appropriate guideline sentence can be found by looking at the row labelled "1st PG" under the column labelled "S.League", which is an imprisonment term of 1 year.

20 Using the same theoretical construct, I then go on to consider the appropriate sentence if the standard offender has instead tried to fix a FIFA World Cup match, based on the same questions. These form the end points of the various lines. From the Framework, one can see immediately that a repeat offender who tries to unfairly influence a World Cup game will very quickly get a sentence close to the maximum of 5 years' imprisonment under s 5 of the PCA. Indeed, the guideline sentence for a first offender who claims trial is 3½ years' imprisonment. This is indicative of the importance of a World Cup game, which will often be proportionate to the culpability of the offender and harm caused by the offence. This will demonstrate that Singapore is extremely serious about dealing with the scourge of match-fixing in this country.

21 There are numerous professional football competitions around the world and I make no attempt to determine where they all stand in relation to each other. It will be for the sentencing judge to determine where on the spectrum between the S.League and the World Cup that the game the offender has fixed actually falls. For illustration, I set out a tiny sample of the possible football competitions that a sentencing judge may have to consider (in no particular order):

(a) FIFA World Cup;

(b) UEFA Champions League;

(c) English Premier League;

(d) La Liga;

(e) Bundesliga;

(f) Italian Serie A;

(g) Campeonato Brasileiro Serie A;

(h) AFC Champions League;

(i) J-League;

(j) Malaysia Super League; and

(k) S.League.

22 While this point may be obvious, the *competition* itself will not always be determinative of the impact and importance of the game to be fixed. For example, the game that determines who wins the English Premier League may potentially be regarded as being more important than a game that takes place during the FIFA World Cup group stages. So an offender who tries to fix the former may deserve a higher sentence as compared to one who tries to fix the latter, even if one considers the World Cup to be more prestigious than the English Premier League. The Framework should be used with a healthy dose of common sense and not in a rigid and unthinking manner.

23 Moreover, a sentencing judge must also be alive to the possibility that the relative importance of each football competition may change over time. Such potential shifts must be taken into account especially when considering the utility of sentencing precedents. The relative popularity and importance of the competition must be assessed at the time of the offence.

Applying the Framework

24 A sentencing judge may begin by considering which line in the Framework applies to the offender before him. The sentencing judge will consider first whether the offender is a first offender or a subsequent offender, and whether he is a PG offender or a CT offender. For present purposes, assume that the offender is a standard offender. Also assume that he has not profited by his offence. If he is a first offender (in the sense I have defined it) and he is convicted after a trial for fixing an important World Cup match, the relevant sentencing graph is thus the one labelled "1st CT". Assume that no additional mitigating or aggravating factors exist. As he has fixed an important World Cup match, the guideline sentence is 2½ years' imprisonment.

25 Let us say that this offender is caught again for fixing another World Cup match. Again, he claims trial and is convicted. The relevant graph is then the one labelled "2nd CT" in the Framework, and the guideline sentence is 3½ years' imprisonment.

26 I emphasise that, even though the offender in the above example is simply the standard offender contemplated by the Framework, the sentencing judge must nevertheless exercise his discretion as to whether or not to impose the guideline sentence.

27 Now, what if the standard offender has fixed a Bundesliga match? The offender is a first-time PG offender. The relevant graph is therefore the one labelled "1st PG". However, to see the guideline sentence, the sentencing judge will then have to take the additional step of considering where the Bundesliga falls on the spectrum between the S.League and the World Cup. Assume that the sentencing judge takes the view that the reputation and level of interest in the Bundesliga falls approximately on the two-thirds mark on the x-axis closer to the World Cup. From the Framework, one can see the guideline sentence is 2 years' imprisonment, without any further calculation. The judge does not need to interpolate the data as this has already been done for him graphically.

28 What if there are mitigating or aggravating factors that do not fall within the Framework? Such relevant factors could include the myriad of factors which are simply not contemplated in the Framework, for example, if the offender has a large number of charges to be taken into consideration for the purpose of sentencing. These could also relate to factors that are assumed for the standard offender in the Framework but do not apply to the offender, such as where the actual offender:

(a) is very sick or suffering from a debilitating long term illness;

(b) is very young or very old;

(c) is a real novice or not a seasoned offender;

(d) is not involved in a syndicate;

(e) has fully cooperated with the investigations;

(f) has provided useful information leading to the arrest of other syndicate members; and/or

(g) is a high-ranking member of a syndicate or a mere runner in a syndicate.

29 Obviously, if these factors exist, the sentencing judge will have to give them the weight they deserve. Let us assume that the offender who fixed a Bundesliga match (at [27] in this Annex) has also assisted the police with useful information that has led to other arrests. The judge may consider that this warrants a 6 months' reduction from the guideline sentence. He therefore sentences the offender to 1½ years' imprisonment instead. This would be a correct and appropriate way of using the Framework.

Responses to possible concerns regarding the Framework

30 It is appropriate now to address why I choose to set out the Framework in the form of a graph instead of, say, a table. A graph is really no more than a table in a fine form. By setting out a graph at the first instance, it saves the sentencing judge the trouble of having to interpolate between the data points that are found in a table. Moreover, the use of graphs is flexible, in that it can admit of many more factual variations. A graph can readily provide a multi-factorial presentation pictorially. This is particularly helpful as the determination of an appropriate sentence requires a multi-factorial analysis. It is a challenging task having to mentally weigh all the possible aggravating and mitigating factors when deliberating on sentence. There is also a very real chance that the sentencing judge may omit some relevant factors and therefore be led into error. The need to consider the relevance of precedent cases and to determine the quantitative adjustments needed to the sentence when the factual situation facing the sentencing judge differs from one precedent case to another is a further complication.

31 Objections may also be raised as to the use of a theoretical construct in determining the guideline sentences. To devise a coherent sentencing framework based on precedents alone, a significant number of comparable cases will be needed to provide the data points for such an exercise. Using a theoretical construct at the outset is useful and necessary as it will often be too long to wait until a sufficiently large number of the right cases have come along to enable a framework based entirely on actual precedents to be constructed. In other words, without using a number of assumptions, it is very difficult, if not impossible, to provide a guideline sentencing framework that is sufficiently detailed, clear and helpful. A careful and considered analysis of the theoretical construct is not an empty exercise. It is an exercise that is not dissimilar to that which is undertaken by a judge in an actual case. This is not a shot in the dark.

32 Hopefully, going forward, the Framework may be usefully utilised as a *starting point* for future judges with respect to match-fixing offences. The Framework is not to be used blindly. A judge may for his own reasons depart from it. To be clear, I must emphasise that a judge who *normalises* the facts of his case to the Framework is not actually *departing* from the Framework. A judge who departs from the Framework is one who does not even use the Framework as a starting point (except, perhaps, to reject it). Normalisation is a very different thing. Normalisation is essentially the act of turning an apple into an orange so that you can compare oranges with oranges.

33 To give an example, let us assume that the trial judge is concerned with an offender who is a *true novice* in that he was caught on his very first try in fixing a football match. The trial judge might consider that this warrants a 6 months' discount from the guideline sentence. That is not a departure from the Framework as the judge is not rejecting the validity of the Framework. On the contrary, the judge's use of the Framework is spot on.

34 Indeed, the use of precedent cases by judges always involves a process of normalisation as well. The difficulty is that the facts in the precedents are often very different from one another and from the case before the judge. Making sense of a cluster of sentences based on differing fact patterns is difficult – and when they also include unreported cases this can be very difficult indeed. Even a precedent that seems to be on all fours with the facts may with more detailed analysis be found actually to be an outlier statistically. By beginning with assumed facts which are *clearly* set out in guideline sentences, this necessary normalisation process is greatly simplified.

The potential of computerisation

35 Another advantage of the Framework (or something similar) is that it can be programmed into a computer system, which can help the judge deal with the multiplicity of factors inherent in the sentencing process and in turn assist in reducing variations in sentencing.

36 How can such a computer programme be usefully rolled out? Generally, one avenue is to establish a sentencing commission made up of members who are chosen from the various stakeholders in the criminal sentencing process, including judges, members of the Bar, the Public Prosecutor, academics, other professionals such as statisticians, medical professionals, and so on. The sentencing commission could be chaired by a judge. Through the exercise of the collective wisdom of its members, the sentencing commission will determine the sentencing considerations relevant to the particular offence, and the proper weight to be given thereof, as well as the guideline sentences that are appropriate to the circumstances. The result of their determination is then given to computer software programmers ("programmers") who will use the resulting Framework to devise the computerised sentencing guideline system ("the System"). It must be emphasised that neither the programmers nor the computer sets the rules – these rules are prescribed by the sentencing commission. Essentially, it is not the programmers but the sentencing commission which designs the whole sentencing framework and sets out all the relevant quantitative parameters for the System. The programmers merely implement the framework as designed by the sentencing commission. The end goal is a computerised system that allows the sentencing judge to input the numerous factors that ought to be generally taken into account and which are present in the specific case. The System would then provide a guideline sentence for the judge's reference, without the judge having to look for comparable precedents. This is not to say that the judge *cannot* look for precedents for assistance – indeed, it may be helpful to see how previous cases have differed. I also emphasise that these guideline sentences are more indicative than mandatory. The actual decision as to sentence is always made by the judge and his discretion is not fettered in any way.

37 Of course, there are many who would be suspicious of such a programme, which would involve the use of mathematical algorithms by the programmers in implementing the sentencing framework or System as designed by the sentencing commission. One might take the view that this would lead to inflexibility and rob the judge of his discretion. They may say that there is too much precision involved. This is misconceived. Sentencing is both an art and a science. Science is merely a *tool* to facilitate the exercise of discretion in a more systematic, fair and consistent manner. It helps to ensure that the weighing of competing factors is more structured under the guidance of the sentencing framework as designed by the sentencing commission. All the computerised sentencing framework or System does is eliminate the more tedious aspects of the sentencing process so as to

allow the judge to better focus his mind on the exercise of his discretion, which is where the art of sentencing lies.

38 The advantages of a computerised system, as I have outlined it, are numerous. I have spoken extra-judicially on these benefits and it is worthwhile for me to repeat them here. To begin, a computerised system forces a structured analytical approach to be adopted because relevant sentencing principles, relative weightages of different factors and all other sentencing considerations have to be set out and translated into quantitative guidelines as dictated by the sentencing commission during the design stage of the System. It thus embeds the collective sentencing wisdom of the sentencing committee in the graphical or quantitative guidelines, which can be documented into a "User cum Teaching Manual" and translated into user specifications for designing the algorithms and programme software for the System. Once the System is operational, it is less likely to have inadvertent omissions in the consideration of significant aggravating and mitigating factors, or errors in the application of relative weightages, by those involved in the sentencing process. Fewer appeals may be brought when it becomes harder to justify any wrong application of sentencing principles, or explain where over or insufficient weightages had been given to certain sentencing factors by the sentencing judge, who has used the System (as designed by the sentencing commission) as a guide.

39 Moreover, through its use, the System itself becomes an important repository of institutional sentencing knowledge and practical sentencing practices. Such knowledge can be disseminated widely for use as a sentencing guide. It also promotes predictability and greater transparency in sentencing when the System is made available not only to lawyers but also to the public and in particular to self-represented accused persons for their use. By increasing sentencing consistency, it also increases the respectability and public confidence in the criminal justice system. The System may even lead to more guilty pleas when sentences are more predictable and when the benefits of pleading guilty early can be quantitatively demonstrated by the System. The System, accompanied by an e-instruction manual containing a full explanation of how the relevant principles are applied in a quantitative manner, can be used as an interactive teaching and training tool, be it for judges, deputy public prosecutors, or the members of the Bar as part of the Continuing Professional Development Programmes ("CPDP"). The effects on the sentencing outcome arising from the interaction of different factors and weightages are readily demonstrated during training when the participants play with the System and get familiarised with it. The collective knowledge and wisdom of the multi-disciplinary panel is thus imparted to the participants *via* the System. CPDP lectures on sentencing will become more lively and practical.

40 Nevertheless, I am aware that a computerised system brings with it a number of disadvantages. Undoubtedly it will be more expensive to develop than manual guidelines. Extensive judicial and legal resources will have to be deployed during the developmental phase of the design of the System (*ie*, when determining the quantitative parameters and the quantitative weightages in respect of the various sentencing considerations for various types of offences). To reduce such developmental costs, the System should be limited only to those offences which are prevalent and where fairly wide disparities in sentences have been observed. Besides that, there is a risk of overreliance on the System by users who do not have a proper understanding of the concepts and parameters behind the System design. Finally, more time and effort will be needed during the sentencing process because the judge has to input the relevant parameters into the System before he can obtain the guideline sentence. While I am aware of these pitfalls, I believe that the benefits of the computerised System outweigh the costs. The art and science of sentencing are complementary, not competing. The proper use of science improves, and does not detract from, the art of sentencing.

Conclusion

41 The Framework lays out a set of guideline sentences imposing stiff imprisonment terms which, in light of changing circumstances, are necessary to deter any would-be match-fixers. It also demonstrates that Singapore has no tolerance for match fixing activities of any kind. Nevertheless, it is reiterated that the Framework is not intended to be a straitjacket on the sentencing judge. Indeed, in order to use the Framework properly, the sentencing judge is expected to be alive to the differences between the case before him and the factual assumptions adopted in the Framework, for no two cases are ever exactly alike. It does not permit the judge to abdicate his responsibility to exercise his discretion properly to impose a sentence appropriate to the case at hand, regardless of whatever guideline sentence the Framework indicates.

[note: 1] NE, 15 July 2013, p 30, lines 16 – 18.

[note: 2] ROP, vol 4, p 90.

[note: 3] NE, 15 July 2013, p 30 line 23 to p 31 line 8.

[note: 4] ROP, vol 4, p 74.

[note: 5] Skeletal Submissions of the Appellant in MA/158/2014/01 and the Respondent in MA/158/2014/02 dated 17 Oct 2014 ("Ding's Submissions dated 17 Oct 2014"), paras 4 and 5.

[note: 6] Ding's Submissions dated 17 Oct 2014, paras 9 and 10.

[note: 7] Ding's Submissions dated 17 Oct 2014, paras 14 and 18.

[note: 8] Ding's Submissions dated 17 Oct 2014, paras 19 and 20.

[note: 9] Ding's Submissions dated 17 Oct 2014, para 21.

[note: 10] Prosecution's Submissions on Sentence dated 19 September 2014 ("PSS"), para 6

[note: 11] NE, 17 July 2013, p 71, lines 11 to 25.

[note: 12] Prosecution's Bundle of Authorities, Tab 25, p 19.

[note: 13] PSS, para 22.

[note: 14] PSS, para 24.

[note: 15] PSS, para 55.

[note: 16] PSS, para 31.

[note: 17] PSS, para 62.

[note: 18] PSS, para 84.

[note: 19] PSS, paras 81 to 83.

[note: 20] PSS, para 115.

[note: 21] PSS, para 64; see Prosecution's Submissions on Conviction, Annex C.

[note: 22] NE, 15 July 2013, pp 16 to 18.

[note: 23] PSS, para 66(a).

[note: 24] PSS, para 69.

[note: 25] See PSS, para 129.

[note: 26] PSS, para 96.

[note: 27] ROP, vol 4, p 74; see also NE, 15 July 2013, p 42 line 13 to p 43 line 20.

[note: 28] PSS, para 11.

[note: 29] PSS, para 106.