IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 218

Magistrate's Appeal No 9006–9009 of 2018/01

Between

(1) Lau Cheng Kai
(2) Loh Hong Hoo
(3) Samsudin Bin Rais
(4) Chua Yee Seng

… *Appellants*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9006–9009 of 2018/02

Between

Public Prosecutor

… *Appellant*

And

(1) Lau Cheng Kai
(2) Loh Hong Hoo
(3) Samsudin Bin Rais
(4) Chua Yee Seng

… *Respondents*

JUDGMENT

[Criminal law] — [Prevention of corruption act] — [Criminal conspiracy]
[Statutory interpretation] — [Penal statutes]

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3 August 2018

8 October 2018 Judgment reserved.

Chan Seng Onn J:

Introduction

1 These appeals centre on the hitherto unconsidered issue of the proper interpretation of s 31 of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) (the "PCA"). Section 31 states:

> Conspiracy
>
> 31. Whoever is a party to a criminal conspiracy, within the meaning of the Penal Code [Cap. 224], to commit an offence under this Act *shall be deemed to have committed the offence and shall be liable on conviction to be punished with the punishment provided for that offence.*
>
> [emphasis added]

2 Specifically, the question is whether, given that s 31 of the PCA has the effect of deeming the PCA offence that is the subject of the criminal conspiracy

to have been committed, a sentencing judge nevertheless has the discretion to give a discount in sentence on the basis that the PCA offence was not *factually* committed. Or would the sentencing judge be bound to impose a sentence as if the conspirators had *in fact committed the PCA offence* which they conspired to commit?

3 The appellants, Lau Cheng Kai ("Lau"), Loh Hong Hoo ("Loh"), Samsudin Bin Rais ("Samsudin") and Chua Yee Seng ("Chua") (collectively, the "Appellants") each claimed trial to one charge under s 31 of the PCA for being involved in a criminal conspiracy to bribe chief engineers and surveyors of marine vessels, so as to conduct illegal "buy-back" transactions of bunker fuel, where the chief engineers and surveyors would falsely certify that the correct quantity of bunker fuel had been delivered, even though the bunkering company would in reality supply less than what was paid for. The case was heard by the District Judge below (the "Judge") and at the conclusion of the trial, the Judge convicted each of them of the charge. I note that such corrupt buy-back transactions are not uncommon in the bunkering industry: see, for example, *Lim Teck Chye v Public Prosecutor* [2004] 2 SLR(R) 525 ("*Lim Teck Chye*") and *PP v Lam Tat Fei* [2014] SGDC 264 ("*Lam Tat Fei*"). These practices, if left unchecked, severely undermine Singapore's reputation as a hub for maritime services.

4 The Appellants were sentenced variously to imprisonment terms of between two weeks and three months by the Judge. The Appellants then filed the present appeals against both conviction and sentence, whilst the prosecution filed cross-appeals against sentence.

5 Having heard the submissions of parties, I did not find that the Judge had convicted the Appellants against the weight of the evidence. Accordingly,

I dismissed the appeals against conviction at the hearing before me on 3 August 2018. Therefore, the sole matter remaining for my consideration involves the appeals and cross-appeals against the sentences imposed by the Judge, which form the subject matter of this reserved judgment.

Facts

6 I fully agree with the Judge's findings of fact which can be found in his grounds of decision in *PP v Loh Hong Hoo and 3 others* [2018] SGDC 92. Therefore, I shall only reproduce the salient facts which are necessary for an appreciation of the issues on sentence in these appeals.

Background to the conspiracy

7 The second appellant, Loh, was at all material times the general manager of Global Marine Transportation Pte Ltd ("GMT"), a company in the business of providing, *inter alia*, bunkering services to marine vessels. In August 2012, Loh received US$30,000 in cash from one Ronnie Lau, his former boss and the then managing director of GMT.[1] Ronnie Lau had instructed Loh that this money was to be applied towards GMT's purposes.

8 In July 2013, Chua, who was at all material times the operations manager of GMT, approached Loh with a proposal to cover GMT's loading losses by carrying out buy-back transactions. Loading losses result from the loss of bunker fuel that may occur when barges load bunker fuel at the terminals and there is a variance between the terminal and barge readings. Such variance can arise due to factors such as the temperature of the fuel. There is an industry standard for tolerance of such variance, and any loading loss is usually absorbed by the bunker company.[2]

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1 Grounds of decision, [16].

9 Loh agreed with this proposal and passed the US$30,000 to Chua to be used for carrying out these buy-back transactions.[3] In his statement, Chua described the manner in which these buy-back transactions would be carried out: "[b]uy-back means that the chief engineer of the vessel will agreed [*sic*] to sell us back the extra bunker and we will pay him some money for agreeing to do so". Chua went on to state, as an illustration, that GMT would contractually agree to supply 1000 metric tonnes of bunker to a vessel. However, it would, in reality, only supply 950 metric tonnes of bunker, and pay a bribe to the chief engineer of the vessel to certify that 1000 metric tonnes of bunker were supplied. In such transactions, the bunker clerk and the surveyor would also be involved as they would be the ones taking the opening and closing readings of the fuel gauge. Therefore, part of the bribe meant for the chief engineer would also have to go to the bunker clerk and surveyor for their involvement in faking the opening and closing readings.[4]

10 Subsequently, Chua passed the US$30,000 on to Lau and instructed him to hold on to the money and stand-by in preparation for any bribes that they would have to pay to carry out the buy-back transactions. Separately, Chua also briefed Samsudin about the details of the plan. Samsudin, being the cargo officer who would actually be on board the vessels, would inform Lau if there was a potential buy-back transaction. Lau would then call Chua to seek approval for the amount of bribe to be paid. After Chua approved the amount, Lau would then deliver the bribe monies to Samsudin, who would then pass on the bribe to the relevant people on board the vessels.[5]

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2 Grounds of decision, [40].

3 Grounds of decision, [17].

4 Grounds of decision, [21].

5 Grounds of decision, [23].

The attempt to carry out the conspiracy

11 On 29 October 2013, a bunkering barge operated by GMT, the *Swan*, was supplying bunker to a vessel, the *Demeter Leader*. Samsudin was the cargo officer stationed on board the *Swan*.[6] At 3.50pm, Lau received a call from Samsudin, who requested for US$6,000 to be passed to him for the purpose of paying bribes to carry out a buy-back transaction.[7] Lau then sought approval from Chua, which Chua granted. Lau thereafter went to Pasir Panjang pier and handed Samsudin the US$6,000.[8]

12 Later that night, at about 9.15pm, the Maritime and Port Authority of Singapore and the Corrupt Practices Investigation Bureau ("CPIB") conducted a joint raid on the *Swan* and the *Demeter Leader*. A simultaneous raid was conducted by another CPIB team at Lau's residence. Lau was arrested and escorted back to the CPIB's premises.[9]

Chua's attempt to hide the remaining US$24,000

13 After Lau was arrested, Lau's son delivered an envelope to Chua which contained the remaining US$24,000.[10] Chua then passed the US$24,000 to his wife, and instructed her to pass the money to his mother to take to his brother's home. Chua admitted that his intention was to hide the US$24,000.[11] The US$24,000 was subsequently recovered by CPIB officers from Chua's brother's home.

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6 Grounds of decision, [26].

7 Grounds of decision, [27] and [32].

8 Grounds of decision, [30].

9 Grounds of decision, [33].

10 Grounds of decision, [36].

11 Grounds of decision, [37].

14 Importantly, it should be noted that there was no evidence adduced at the trial below of any actual buy-back transaction that had taken place.[12] However, the Judge held that for a charge of criminal conspiracy, the mere criminal agreement is an offence even if no step is taken to carry out that agreement: *NMMY Momin v The State of Mahrashtra* (1971) Cri LJ 793 at 796, cited by the Court of Appeal in *Chai Chien Wei Kelvin v PP* [1998] 3 SLR(R) 619 at [75].[13]

Decision below

15 In coming to his decision on sentence, the Judge first considered the interpretation of s 31 of the PCA. The Judge held that on a plain reading of the provision, conspirators are only liable to the same *maximum* punishment prescribed for the offence.[14] This is in contrast to the interpretation advanced by the prosecution, which was that the conspirators should be punished *as if they had actually* paid out the bribes and committed the offence. The Judge then went on to state that an "incomplete, inchoate offence such as a simple conspiracy would generally involve a lower degree of culpability and harm than a completed offence" and that the sentence therefore "ought to be commensurately lower".[15]

16 Notwithstanding his interpretation of s 31 of the PCA, the Judge held that the custodial threshold had nevertheless been crossed in the present case. This is on the basis that for corruption in strategic industries such as bunkering, there is an overwhelming need for deterrence which will not be achieved by

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12 Grounds of decision, [68].

13 Grounds of decision, [10].

14 Grounds of decision, [88].

15 Grounds of decision, [89].

anything short of a custodial sentence.

17 In sentencing Chua and Loh each to three months' imprisonment, the Judge relied on *PP v Kolodiy Yaroslav* (DAC 932582/2016). In that case, the chief engineer of a vessel who pleaded guilty to receiving a bribe of US$8,800 was sentenced to three months' imprisonment. The Judge held that while Chua and Loh did not receive or give any bribes, they had agreed to use the US$30,000 for corrupt buy-back transactions, and therefore a similar sentence would be appropriate.[16]

18 In sentencing Lau to two weeks' imprisonment, the Judge relied on *Lam Tat Fei*, which will be discussed in further detail at [65] below. The accused in that case was a deliveryman who was convicted after trial for delivering bribes of US$5,500 and US$8,400, and for receiving a bribe of US$200. He was sentenced to six weeks' imprisonment in total. The Judge held that although the bribe amounts were similar in scale to the US$6,000 that Lau delivered to Samsudin, there was no evidence that harm in the form of a bribe had occurred in the present case and Lau received no bribe monies. Accordingly, Lau's sentence ought to be significantly lower.[17] The Judge then went on to sentence Samsudin to one months' imprisonment, on the basis that his culpability was higher than that of Lau's, but significantly lower than that of Chua and Loh.[18]

19 Significantly, the Judge reiterated that "inchoate offences such as conspiracy would generally be lower in terms of culpability and harm than completed offences", which he accounted for in calibrating the sentences imposed.[19]

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16 Grounds of decision, [100].

17 Grounds of decision, [101].

18 Grounds of decision, [102].

The parties' cases

20 The Appellants submit that the sentences of imprisonment imposed on them are manifestly excessive. They each contend that a high fine in lieu of an imprisonment term is more appropriate. Specifically, in relation to the interpretation of s 31 of the PCA, counsel for Loh, Mr Shashi Nathan, seeks to uphold the Judge's interpretation *ie*, that conspirators under the provision are merely liable to the same *maximum* punishment prescribed for the offence. He offers three reasons in support of this position: [20]

(a) In a criminal conspiracy where the corrupt act did not take place, there is no way of quantifying the actual bribe amounts, the wrongful gains, or any losses incurred by the various parties. Therefore, it is not possible for an offender to be sentenced on the basis that the offence did take place because the court will not be able to ascertain the precise facts of the offence and can only make assumptions as to what may have unfolded.

(b) Section 31 limits itself to stating that the offender "shall be deemed" to have committed the offence, but stops short of saying that the offender shall be "punished in the same manner as if he had committed the offence".

(c) Taking into consideration the fact that the PCA does not have a separate punishment provision for abetments or criminal conspiracy, offenders involved in criminal conspiracies under the PCA should be punished with the punishments provided for under the relevant sections concerning offences for which they

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19 Grounds of decision, [98].

20 Loh's written submissions, para 94.

> are deemed to have committed. However, the said punishments must be calibrated to reflect s 120B and s 116 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Code"). This reading is consistent with the PCA's clear intent that the "criminal conspiracy" in the PCA is to be understood as a "criminal conspiracy" within the meaning of the Code.

21 I note that the other appellants have not addressed this issue in their written submissions. However, at the hearing before me on 3 August 2018, counsel for the three other appellants stated that they would adopt Mr Nathan's submissions on this issue of the interpretation of s 31 of the PCA.

22 The prosecution, on the other hand, contends that the sentences imposed are manifestly inadequate, and argues that the imprisonment terms imposed by the Judge should be doubled. The primary basis for this contention is that the Judge had erred in his interpretation of s 31 of the PCA, which should instead be interpreted to mean that the offenders must be punished *as though the PCA offence was committed pursuant to their criminal conspiracy*.[21] On this interpretation of s 31, a sentencing judge should not give a discount in the sentence on the ground that the PCA offence constituting the subject of the criminal conspiracy was not in fact committed because the offender is deemed by law to have committed the PCA offence. Hence, the Judge erred in accounting for the fact that criminal conspiracy in question was an inchoate offence when he calibrated the sentence downwards for each of the Appellants (see above, at [15] and [19]).

23 This interpretation of s 31 of the PCA, the prosecution argues, is clear from a plain reading of the provision. Otherwise, the legislature would not have

[21] Respondent's written submissions, para 77.

included the phrase "shall be deemed to have committed the offence".[22] The prosecution relies on extraneous materials to argue that this interpretation is also in line with parliamentary intention.[23]

Issues to be determined

24 As alluded to above, the primary – and preliminary – issue that has to be determined is how s 31 of the PCA should be properly interpreted, specifically in relation to how an offender who is convicted under the section should be sentenced.

25 If I find that the Judge had erred in his interpretation of s 31, it follows that the Judge is *wrong in law* in imposing the sentences below. Accordingly, I am at liberty to set aside the sentences imposed by the Judge below and substitute an appropriate sentence for each of the Appellants: see s 394 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

26 If, however, I find that the Judge is correct in his interpretation of s 31 of the PCA, I must nevertheless go on to consider whether the sentences imposed are manifestly excessive or inadequate.

My decision

The methodology

27 Before embarking on the task of determining the proper interpretation of s 31 of the PCA, I consider it helpful to first state the applicable principles relating to statutory interpretation. These principles, as well as the methodology which the courts should adopt when conducting statutory interpretation, have

[22] Respondent's written submissions, paras 79 to 81.

[23] Respondent's written submissions, paras 88 to 99.

been most recently clarified and summarised by Sundaresh Menon CJ in *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 ("*Ting Choon Meng*") at [59]:

> …[T]he court's task when undertaking a purposive interpretation of a legislative text should begin with three steps:
>
> (a) First, ascertaining the possible interpretations of the text, as it has been enacted. This however should never be done by examining the provision in question in isolation. Rather, it should be undertaken having due regard to the context of that text within the written law as a whole.
>
> (b) Second, ascertaining the legislative purpose or object of the statute. This may be discerned from the language used in the enactment; but… it can also be discerned by resorting to extraneous material in certain circumstances. In this regard, the court should principally consider the general legislative purpose of the enactment by reference to any mischief that Parliament was seeking to address by it. …
>
> (c) Third, comparing the possible interpretations of the text against the purposes or objects of the statute. Where the purpose of the provision in question as discerned from the language used in the enactment clearly supports one interpretation, reference to extraneous materials may be had for a limited function – to confirm but not to alter the ordinary meaning of the provision as purposively ascertained…

28 Applying this methodology to the present case, I first have to ascertain the possible interpretations of s 31 of the PCA, having regard to the text of the provision in the context of the PCA as a whole. Thereafter, I have to ascertain the legislative purpose or object behind s 31 of the PCA, by considering the mischief that Parliament was seeking to address by it. This may be discerned from the language of the PCA itself, extraneous material in the form of any explanatory statement relating to the Bill containing the provision, or any speech made in Parliament by a Minister during the second reading of the Bill in question: see s 9A(3) Interpretation Act (Cap 1, 2002 Rev Ed) ("the IA"). Finally, I have to compare the possible interpretations of s 31 against the purposes or objects of the statute, and adopt the one that is most consistent with

promoting the said purposes or objects of the statute.

Possible interpretations of s 31 of the PCA

29 Section 31 of the PCA states that a party to a criminal conspiracy "shall be deemed to have committed [the PCA offence which is the subject of the criminal conspiracy]". The effect of this "deeming provision" is that an offender who is convicted under s 31 of the PCA is statutorily *deemed* to have committed the PCA offence that he conspired to commit, notwithstanding that he did not *factually* commit it. This much is clear and uncontroversial.

30 However, what is less clear, therefore leading to the uncertainty in interpreting this provision, is the subsequent part of s 31 which deals with the punishment for criminal conspiracy under the PCA. The provision states that an offender under s 31 of the PCA "shall be liable on conviction to be punished with *the punishment provided for that offence*" [emphasis added]. This gives rise to two possible interpretations:

> (a) The first interpretation ("the First Interpretation") is that an offender convicted under s 31 of the PCA is merely liable to the same maximum sentence as provided for in the offence creating provision. For example, if the conspirators conspire to commit corruption under s 5 of the PCA, they 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, as is provided for in s 5 of the PCA. On this interpretation, the sentencing judge retains the discretion to calibrate the sentence downwards on the basis that the PCA offence that is the intended subject of the criminal conspiracy is not factually committed and hence the criminal conspiracy remains an inchoate offence where the harm that would have been the natural consequence of the PCA offence, if committed as a result of the

criminal conspiracy, has not in fact materialised. This is the interpretation preferred by the Judge, which the Appellants now seek to uphold.

(b) The second interpretation ("the Second Interpretation") is that an offender convicted under s 31 of the PCA must be punished on the basis that the criminal conspiracy as planned is deemed to have been successfully carried out and that the intended PCA offence that the conspirators conspired to commit is deemed to have been committed by them as a consequence of their criminal conspiracy. It follows that on this interpretation, the sentencing judge cannot give a discount on the basis that the offence is factually not committed and therefore any harm that would have been associated with having committed that PCA offence is in fact absent. This is the interpretation advanced by the prosecution.

The proper interpretation of s 31 of the PCA

31 In my judgment, having regard to the language of s 31 in the context of the PCA in its entirety, the proper interpretation to be adopted is the Second Interpretation. Accordingly, no mitigating weight or sentencing discount ought to be given by the Judge on the basis that the criminal conspiracy in question is an inchoate offence because the PCA offence, being the subject of the conspiracy, has not in fact been committed. I say this for two main reasons.

The First Interpretation would render the deeming provision otiose

32 First, adopting the First Interpretation renders the deeming provision otiose and hence this militates against it being the proper interpretation of s 31 of the PCA. The Court of Appeal in *Tan Cheng Bock v Attorney-General* [2017]

2 SLR 850 ("*Tan Cheng Bock*") stated at [38] that "Parliament shuns tautology and does not legislate in vain; the court should therefore endeavour to give significance to every word in an enactment". The effect of the deeming provision is to deem in law that an offender has committed the PCA offence that is the subject of the criminal conspiracy, even though for some reason, the PCA offence may not have materialised or may not have been committed. As the practical consequence of committing any offence is that the offender should be punished for it, it follows that if the offender has been deemed in law to have committed an offence, the practical consequence is for him to be punished as if he has committed the offence. In other words, he is to be treated no differently from one who has committed the same offence for the purpose of punishment.

33 Indeed, it was stated in *Union of India v Jalyan Udyog* (1994) 1 SCC 318 at [19] that "where a fiction is created by a provision of law, the court must give full effect to the fiction … Fiction must be given its due play; there is to be no half-way stop." This principle was cited with approval by the Court of Appeal in *Chief Assessor v Glengary Pte Ltd* [2013] 3 SLR 339 ("*Glengary*") at [35], where the Court similarly had to consider the effect of a deeming provision. To use the language of the Court in *Glengary*, the deeming provision in s 31 creates a "statutory fiction" that an offender has committed the PCA offence that is the subject of the criminal conspiracy, and this fiction "must be given its due play" by punishing the offender as though he has committed the PCA offence. For the sentencing judge to give a sentencing discount to each of the criminal conspirators on the basis that the PCA offence has not factually been committed is to undo this practical consequence of the deeming provision under s 31. This in effect renders the deeming provision otiose.

34 In this regard, I disagree with the Appellants' argument that by stopping short of stating that the offender shall be "punished in the same manner as if he

had committed the offence" (see [20(b)] above), no inference can be drawn that such is the intended effect of the words in s 31 that the offender "*shall be deemed to have committed the offence*". Although it is not explicitly stated as such, I have illustrated above that the necessary corollary of having such a deeming provision in s 31 is that the offender who is deemed to have committed the offence must be "punished in the same manner as if he had committed the offence". In my view, the existing text of s 31 makes it sufficiently clear that this is the interpretation that Parliament intended without the need for it to be stated in the manner suggested by the Appellants.

35 As a further illustration to how the deeming provision is rendered otiose if the First Interpretation is adopted, the prosecution submits that even if the entire deeming provision is struck out from s 31, the First Interpretation still holds. This is illustrated as follows:

> Whoever is a party to a criminal conspiracy, within the meaning of the Penal Code [Cap. 224], to commit an offence under this Act ~~shall be deemed to have committed the offence and~~ shall be liable on conviction to be punished with the punishment provided for that offence.

I agree with the point made by the prosecution. Evidently, the presence of the deeming provision is not necessary to give effect to the First Interpretation. Therefore, given that Parliament is presumed not to legislate in vain, this buttresses my finding that the First Interpretation is not the proper interpretation.

The Second Interpretation is more consistent with the other provisions of the PCA

36 Second, the Second Interpretation is more consistent with the other provisions of the PCA, in particular s 30 which deals with attempts. Section 30 states:

> Attempts
>
> 30. Whoever attempts to commit an offence punishable under this Act *shall be deemed to have committed the offence* and shall be liable on conviction to be punished with the punishment provided for that offence.
>
> [emphasis added]

37 Section 30 of the PCA also contains a deeming provision that is similarly worded to the one in s 31. A harmonious reading of the PCA requires ss 30 and 31 to be interpreted in the same manner, in so far as it relates to how an offender who is deemed to have committed a PCA offence, by virtue of the deeming provision, should be punished. As I will demonstrate below, the absurdity of the First Interpretation is made more apparent when it is applied to s 30. Therefore, an inference can be drawn that the First Interpretation is not the proper interpretation for both ss 30 and 31.

38 It is in the nature of an "attempt" that the act or offence itself is not committed. Indeed, it was observed by Yong Pung How CJ in *Tan Khee Koon v Public Prosecutor* [1995] 3 SLR(R) 404 at [109] that "[a]ttempts and commissions … cannot overlap. … Either he completed the act or he did not. There can be no intermediate state." With regard to attempts under the PCA, the deeming provision makes it clear that the attempted offence is deemed by law to have been committed. The legal effect of this is that pursuant to s 30, the attempted PCA offence is no longer treated as an attempt *per se* but a completed offence. In other words, the attempted PCA offence is simply taken to have been committed by virtue of the deeming provision in s 30. The attempt is treated as having succeeded or carried out to fruition. It therefore makes little sense for the sentencing judge to subsequently disregard the deeming provision completely in s 30 by acknowledging that the attempted PCA offence is factually not committed, and then give a sentencing discount on that basis.

Either the act is committed or it is not, and given that the PCA offence is deemed to be committed by virtue of the deeming provision, then full effect must be given to it by way of the corresponding sentence.

39 I note that s 29 of the PCA, the punishment provision for "[a]betment of offences", contains a similarly worded deeming provision. The above reasoning also applies to s 29, which by law treats every abetted PCA offence as having been committed even if the PCA offence abetted is factually not committed in consequence of the abetment.

40 On a related note, the Appellants argue that the PCA does not have a separate punishment provision for abetments or criminal conspiracies, and therefore they should be punished with reference to the punishments provided for the offences which they have been deemed to have committed. Further, given that "criminal conspiracy" under the PCA is to be understood as "criminal conspiracy" within the meaning of the Code, the said punishments must reflect s 120B read with s 116 of the Code which states the punishment for criminal conspiracy where the offence is not committed in consequence of the conspiracy (see [20(c)] above). I respectfully disagree for three reasons.

41 First, s 31 of the PCA states that "criminal conspiracy" is to be understood within the "*meaning* of the Penal Code" [emphasis added], which suggests that only the *definition* of "criminal conspiracy" (see s 120A of the Code) is to be imported from the Code into the PCA. However, s 31 does not state that the *punishment* for criminal conspiracy under the PCA shall be the same as that provided for in the Code. Therefore, a plain reading of the provision does not support the contention that the punishment provisions for criminal conspiracy in the Code are imported into the PCA.

42 Second, the Appellants are mistaken in stating that the PCA does not have a separate punishment provision for abetments or criminal conspiracy. Sections 29 and 31 of the PCA state that offenders "shall be liable on conviction to be punished with the punishment provided for that [PCA] offence". This specifically provides for the mechanism by which abettors and conspirators for offences under the PCA are to be punished. Therefore, there is no need to have recourse to the punishment provisions under the Code.

43 Third, even taking the Appellants' case at its highest and assuming that we can import the punishment provisions from the Code into the PCA, the correct provision should be s 120B of the Code read with s 109, and not s 116. Section 120B read with s 109 of the Code states that if the act which is the subject of the criminal conspiracy is committed in consequence of the conspiracy, the conspirator shall "be punished with the punishment provided for the offence." Given that s 31 of the PCA expressly deems that the offence which is the subject of the criminal conspiracy has been committed, s 109 is the more appropriate section as opposed to s 116 which provides for the punishment when the offence is *not* committed in consequence of the conspiracy.

44 It should be highlighted that the "operative part" of s 109, *ie*, "punished with the punishment provided for the offence", is phrased in substantially the same way as in s 31 of the PCA. Section 109 of the Code only relates to situations where the offence is *factually committed* in consequence of the criminal conspiracy. Therefore, it is illogical for a sentencing judge punishing an offender under s 109 of the Code to give a sentencing discount on the basis that the offence was factually *not* committed. Hence, the only logical interpretation of s 109 is that a conspirator who is punished under that provision should be sentenced on the basis that the offence was committed, *ie*, the Second Interpretation. Given that the "operative parts" of s 109 of the Code and s 31 of

the PCA are both phrased in broadly the same way, this gives rise to the inference that both these provisions should be understood to operate in the same way.

45 To conclude this part of the analysis, the plain language of s 31 in the context of the PCA as a whole suggests that the proper interpretation to adopt is the Second Interpretation. I will now proceed to ascertain the legislative purpose and object behind the PCA, and thereafter determine if the plain reading of the provision accords with that purpose.

Legislative purpose and object behind the PCA

46 There are two sources from which the court may draw to discern the legislative purpose and object of the PCA. The first source is the text of the PCA itself and its statutory context. The second source is "any material not forming part of the written law" as set out in ss 9A(2) – 9A(3) of the IA, also referred to as "extraneous material": *Tan Cheng Bock* at [42].

47 I begin with an examination of the text of the PCA and its statutory context. The long title of the PCA states: "An Act to provide for the *more effectual* prevention of corruption." [emphasis added] The deliberate use of the term "more" effectual seems to suggest that this iteration of the PCA is meant to be an improvement over its predecessors, in so far as being more effective in preventing corruption.

48 It may therefore be apposite at this juncture to briefly consider the legislative history behind Singapore's anti-corruption legislation. Singapore introduced its first anti-corruption legislation in the form of the Prevention of Corruption Ordinance 1937 (SS Ord No 41 of 1937) ("the PCO"). Section 9 of

the PCO, which governs the abetment of offences under the PCO, states as follows:

> 9. Whoever abets, within the meaning of the Penal Code,
>
> (*a*) the commission of an offence against this Ordinance,
>
> (*b*) the commission outside the Colony of any act, in relation to the affairs or business or on behalf of a principal residing in the Colony, which if committed in the Colony would be an offence against this Ordinance,
>
> *shall be deemed to have committed the offence* and be punishable accordingly.
>
> [emphasis added]

Section 9 of the PCO has been retained in s 29 of the current PCA, albeit in a modified form. Notably, s 9 also contains a deeming provision that is similarly worded to the one in the current ss 29, 30 and 31 of the PCA. Subsequently, by way of cl 20 of the Prevention of Corruption (Amendment) Bill (No 5 of 1966) ("the 1966 Bill"), Parliament introduced two new offences which also contained deeming provisions, namely for attempts (s 30 of the PCA) and conspiracy (s 31 of the PCA).

49 It is evident that the purpose behind the introduction of these new provisions, both of which contain deeming provisions, is to establish a "more effectual" statutory regime for preventing corruption as stated in the long title of the PCA. These amendments provide the Public Prosecutor with an expanded arsenal with which to attach criminal liability on persons who are involved with acts of corruption. Further, the deeming provisions remove the need for the prosecution to prove that all the elements of the completed PCA offence are made out, so long as the would-be offenders can be shown to have abetted, attempted or conspired to commit the PCA offence. Therefore, the text of the PCA and its statutory context does make it clear that its legislative purpose is to more effectively eradicate and prevent corruption.

50 A consideration of the relevant extraneous materials confirms that this is indeed the legislative purpose of the PCA. At the second reading of the Prevention of Corruption Bill, the then-Minister for Home Affairs, Mr Ong Pang Boon, stated that the impetus for replacing the PCO with a new statutory regime was to "to see that all necessary legislative and administrative measures [were] taken to reduce the opportunities of corruption, to make its detection easier and to deter and punish severely those who are susceptible to it and engage in it shamelessly.": *Singapore Parliamentary Debates, Official Report* (13 February 1960) vol 12 at col 377 (Ong Pang Boon, Minister for Home Affairs). Indeed, by expanding the prosecution's arsenal of potential offences for which it can charge offenders under the PCA, and by including deeming provisions, it becomes easier to convict and punish persons who engage in corruption. This in turn causes the PCA to become a stronger deterrent against corruption, *ie*, *more effectual* in the prevention of corruption.

Comparing the plain reading of s 31 with its legislative purpose

51 Comparing s 31 of the PCA with the general legislative purpose behind the PCA, it becomes even more apparent that the Second Interpretation is the proper interpretation to adopt. As I have found above, the PCA's general legislative purpose is to provide a more effectual means of preventing corruption, by deterring those who are susceptible to it and punishing those who engage in it. The Second Interpretation furthers this legislative purpose by ensuring that conspirators (as well as abettors and attempters) under the PCA are punished as though they have committed the PCA offence, thereby giving s 31 (as well as ss 29 and 30) sufficient bite. Pursuant to this interpretation, an offender who merely conspires, abets or attempts to commit an offence under the PCA will be punished as though he has committed the offence. This sends a

strong deterrent signal that any manner of involvement in corrupt acts will not be tolerated.

52 Conversely, adopting the First Interpretation may lead to certain undesirable consequences that detract from the legislative purpose of the PCA. First, an offender may stand to undeservingly benefit from it being merely fortuitous that the offence is not factually committed or carried out to fruition. For example, the criminal endeavour may be intercepted by the officers from the CPIB before the corrupt act can be completed, or having gotten wind of a possible raid by CPIB officers, the offenders may desist from following through with their criminal conspiracy, attempt or abetment of the PCA offence. I see no reason why any discount in sentence should be given simply because the corrupt criminal endeavour was successfully intercepted or interrupted as opposed to one which was not, where the corrupt act was eventually carried out successfully to fruition. In other cases, such as the present, the investigators may simply be unable to find any evidence that a corrupt act had taken place. In the context of bunker corruption where the recipients of the bribes are personnel on board vessels which are only docked in Singapore temporarily, it may be difficult to uncover any direct evidence that a corrupt act has been carried out once the vessel leaves the jurisdiction.

53 Second, if conspirators, abettors or attempters under the PCA are aware that they may receive a lighter sentence if the PCA offence cannot be proved to have been factually committed, this may incentivise the withholding of information which may hinder the investigation process. This runs counter to Parliament's stated purpose which is to "make [the] detection [of corruption] easier" (see [50] above) and serves to impede, rather than promote, the effective prevention of corruption.

54 In the circumstances, I find that the Second Interpretation is the ordinary meaning conveyed by the text of s 31 of the PCA, taking into account the statutory context of the PCA and the underlying legislative purpose. I turn now to consider the extraneous material, which may only be used to *confirm* that this interpretation is correct (see s 9A(2)(*a*) of the IA).

Confirming the ordinary meaning of s 31 through extraneous materials

The Explanatory Statement to the 1966 Bill

55 The prosecution refers me to the Explanatory Statement to the 1966 Bill, which is of direct relevance to the interpretation of s 31 of the PCA given that s 31 was introduced in the 1966 Bill.[24] The Explanatory Statement states:

> Attempts to, and conspiracy to, commit an offence under the Ordinance are made offences punishable under the Ordinance and *the punishment for attempts as well as conspiracy is the same as if the person attempting or conspiring had committed the offence itself*. [emphasis added]

56 It is also clear from the passage that the punishment for an offender who is convicted under the provision for attempts or conspiracy will be the same as someone who has committed the offence itself. In light of this, it is indeed wrong for a sentencing judge to give a sentencing discount on the basis that the offender has factually not committed the offence.

The Australian House of Representative's discussions on the Australian Secret Commissions Act 1905

57 I also agree with the prosecution that the Australian House of Representative's discussions on the SCA are relevant in ascertaining the legislative intention behind the deeming provision.[25] Section 9 of the PCO (see

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24 Respondent's written submissions, para 91.

[48] above), which contains a deeming provision similar to the one found in the current ss 29, 30 and 31 of the PCA, is largely *in pari materia* with s 10 of the Secret Commissions Act 1905 (Australia) ("the SCA"). Section 10 of the SCA states as follows:

> 10. Whoever aids abets counsels or procures or is in any way directly or indirectly knowingly concerned in or privy to –
>
> (*a*) the commission of any offence against this Act; or
>
> (*b*) the commission outside Australia of any act, in relation to the affairs or business or on behalf of a principal residing in Australia, which if committed in Australia would be an offence against this Act,
>
> *shall be deemed to have committed the offence* and be punishable accordingly.
>
> [emphasis added]

Further, the Objects and Reasons of the Prevention of Corruption Bill introduced into the legislative council on 25 October 1937 explicitly states that "[t]his Bill has for its object the prevention of bribery and secret commissions in public or private business, and *is based upon … a few provisions of the Australian Secret Commissions Act 1905*" [emphasis added]: Colony of Singapore, *Proceedings of the Legislative Council* (25 October 1937) at C 458.

58 The relevant exchange, as found in Commonwealth (Australia), House of Representatives, *Parliamentary Debates* (10 October 1905) at 3298 (Alfred Isaacs KC, Attorney-General), is as follows:

> Clause 10 (Aiding and abetting offences).
>
> Mr. GLYNN (Angas) – The English Merchandise Marks Act of 1887, from which I understand this provision to be copied, enacts that whoever "within the United Kingdom" counsels or abets an act which may have been committed outside the

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[25] Respondent's written submissions, paras 93 – 94.

> United Kingdom may be indicted under the Act. I ask why the words "in Australia" have not been used in this clause? Is the omission accidental or deliberate?
>
> Mr. ISAACS (Indi – Attorney-General) – We can legislate only for persons within the Commonwealth. *Any person who is a party to the commission of an offence by another is to be punished as if he himself had committed it*, and we have tried to prevent a person in Australia from arranging for the receipt of an illicit commission outside Australia. The clause could not be taken to apply outside Australia, because the measure, like every Commonwealth Act, must be read by the light of, and be interpreted within the limits of, the Constitution.
>
> Mr. GLYNN – I see the reason for the omission. I thought at first that the intention was to give a wider scope to the clause than can be given under the commercial powers of the Constitution.

It is acknowledged that the exchange between Mr Glynn and Mr Isaacs primarily involved a clarification of the extra-territorial reach of cl 10. However, when speaking in relation to a person in Australia arranging for the receipt of an illicit commission outside Australia (which may be regarded as aiding or abetting the commission of the offence) Mr Isaacs made it clear that such a person is to be punished "as if he himself had committed [the offence]". The plain meaning of this must be that the effect of a deeming provision is such that an offender who is deemed to have committed the offence must also be punished as though he has committed the offence.

59 Having considered the extraneous materials that are placed before me, I am fortified that the proper interpretation of s 31 of the PCA is the Second Interpretation.

Issue 2: Calibrating the appropriate sentences

60 It is trite that an appellate court will not ordinarily disturb the sentence imposed by the trial court except where it is satisfied that, *inter alia*, the sentence is wrong in principle: *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [12].

Given that I have found that the Second Interpretation is the proper interpretation of s 31 of the PCA, it follows that the Judge had erred in principle by giving a sentencing discount on the basis of the First Interpretation and by failing to deem the PCA offence, which is the subject of the criminal conspiracy, to have been committed for the purpose of calibrating the sentence. Therefore, I will now consider what the appropriate sentences should be when the sentencing discount given by the Judge premised on the First Interpretation is removed altogether.

61 As stated by Yong CJ in *Lim Teck Chye* at [68], illegal buy-back transactions, such as the one which is the subject of these appeals, have the "potential to adversely affect public confidence in the independence of marine surveyors and Singapore's bunkering industry." Given that the maritime sector accounts for such a significant portion of our country's economy, these corrupt practices, if undeterred, can indirectly cause far greater harm to Singapore and its citizens, beyond just the financial loss suffered by the vessel owners.

62 Further, such offences are extremely difficult to detect, given that the transactions are carried out on board vessels which are out at sea, and are subsequently covered up by the doctoring of loading records. This problem is exacerbated by the inherently volatile nature of bunker fuel which can lead to inaccuracies in quantity measurements, thereby making it difficult to prove that misappropriation of the bunker fuel has taken place. Therefore, the dominant sentencing principle in this case is that of general deterrence, which accordingly warrants a stiff custodial sentence.

63 Therefore, I dismiss the Appellants' contention that the sentences imposed are manifestly excessive and that a high fine should have been ordered instead. That said, the question still remains as to what is the appropriate

quantum of the sentences to be imposed on each of the Appellants.

64 The prosecution submits that the sentences imposed on each of the Appellants below should be doubled. This will result in custodial terms for each of the Appellants as follows:

(a) Lau: One months' imprisonment;

(b) Samsudin: Two months' imprisonment;

(c) Chua: Six months' imprisonment; and

(d) Loh: Six months' imprisonment.

65 Given that the prosecution relies heavily on the case of *Lam Tat Fei* in support of its position, it may be useful to briefly set out the facts of that case. In *Lam Tat Fei*, the owners of a vessel, the *MT Front Splendour*, requested for marine fuel to be delivered to their vessel upon its arrival in Singapore. Sea Hub Energy Pte Ltd ("Sea Hub"), a licensed bunker craft operator, was engaged to deliver the marine fuel to the *MT Front Splendour*. Jason Choo, an employee of Sea Hub, was the bunker cargo officer responsible for the bunkering operation with the *MT Front Splendour*. Upon boarding the *MT Front Splendour*, Jason Choo came to an agreement with the vessel's chief engineer, one Antonov Sergey, and the independent bunker surveyor, one Victor Loh, to carry out the illegal buy-back of the bunker fuel. Jason Choo then made a telephone call to the accused, one Lam Tat Fei, who was a boatman employed by Sea Hub. Jason Choo requested the accused to seek approval for the buy-back transaction from an unknown person. Shortly thereafter, the accused called Jason Choo and told him to proceed with the transaction. The accused then delivered US$18,000 to Jason Choo who was tasked to pay the bribes. From this sum, US$8,400 was

paid to Antonov Sergey, US$5,500 was paid to Victor Loh and US$3,900 was kept by Jason Choo for himself. The accused received US$200 for his role in the transaction.

66 The accused claimed trial, and was convicted and sentenced on three charges as summarised below:

(a) For abetting the payment of a bribe amounting to US$8,400 (DAC 17800-2013): six weeks' imprisonment;

(b) for abetting the payment of a bribe amounting to US$5,500 (DAC 17799-2013): four weeks' imprisonment; and

(c) for receiving a bribe of US$200 (DAC 17801-2013): two weeks' imprisonment.

The sentences for DAC 17799-2013 and DAC 17801-2013 were ordered to run consecutively, and the global sentence imposed was six weeks' imprisonment. The accused was also ordered to pay a financial penalty of US$200, with a default sentence of one week's imprisonment.

The appropriate sentence for Lau

67 The prosecution argues that Lau's role in the criminal conspiracy is very similar to that of the accused in *Lam Tat Fei*. However, the prosecution concedes that Lau should be less culpable given that he was only engaged by GMT for *ad hoc* deliveries, whereas Lam Tat Fei was a boatman employed by the bunkering syndicate for the specific purpose of delivering bribe monies. Further, Lau was not briefed on the full details of the criminal conspiracy, whereas Lam Tat Fei was a former bunker clerk who was familiar with the workings of buy-back transactions.[26] Nevertheless, given that the total bribe

amount of US$30,000 in the present case is higher than that in *Lam Tat Fei*, the prosecution submits that Lau should receive a moderately lower sentence of one month's imprisonment.[27] The prosecution then calibrates the sentences which ought to be imposed on Samsudin, Chua and Loh, based on their relative culpabilities, with Lau's sentence as a reference point.[28]

68 I agree with the prosecution that Lau's role in the present case is akin to that of the accused in *Lam Tat Fei*. However, where I depart from the prosecution is on the relative culpability of Lau. In my view, Lau is equally, if not more, culpable than the accused in *Lam Tat Fei*. The prosecution states that Lau was merely hired on an *ad hoc* basis to carry out deliveries for GMT. However, the fact is that Lau had been entrusted with the entire sum of US$30,000 which he would then dispense to Samsudin for use in any potential buy-back transactions. He was also the one to contact Chua to seek approval for any buy-back transactions, much like the accused in *Lam Tat Fei*. Clearly, Lau was engaged to play a role that was specific to this criminal conspiracy. On that basis, I disagree that Lau was not briefed on the full details of the criminal conspiracy. In my view, Lau played an integral role in any buy-back transaction that the conspirators sought to carry out. I also note that the total amount of bribe monies that Lau was entrusted with was almost double of that in *Lam Tat Fei*. In the circumstances, I find that the prosecution is more than warranted in submitting for a doubling of Lau's sentence to one month's imprisonment. Accordingly, I would set aside the decision of the Judge and impose a sentence of one months' imprisonment on Lau.

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26 Respondent's written submissions, para 107.

27 Respondent's written submissions, para 108.

28 Respondent's written submissions, paras 109 – 111.

The appropriate sentence for Samsudin

69 Turning now to Samsudin, I agree with the prosecution that his level of involvement is higher and hence he is more culpable than Lau. Samsudin was the one who dealt directly with the intended recipients of the bribes, *ie*, the chief engineer and the independent surveyors on board the vessels, and would in all likelihood be the one to initiate the buy-back transactions and make actual payment of the bribes. Samsudin's role in the present case is similar to that of Jason Choo in *Lam Tat Fei*, who was also a bunker cargo officer and the point of contact with the recipients of the bribes on board the vessel. Jason Choo was given an aggregate sentence of eight weeks' imprisonment, although I note that he pleaded guilty to the charges he faced whereas Samsudin had claimed trial. Nevertheless, accounting for the fact that Jason Choo had personally profited from the buy-back transaction to the tune of US$3,900, and that he faced three charges as opposed to just one for Samsudin, I am of the view that two months' imprisonment sought by the prosecution is an appropriate sentence. Accordingly, I set aside the decision of the Judge and impose a sentence of two months' imprisonment on Samsudin.

The appropriate sentence for Loh and Chua

70 With regard to Loh and Chua, I agree with the prosecution that they were the masterminds behind the criminal conspiracy and therefore they have the highest level of culpability. Loh was the one who gave the overall approval for the corrupt buy-back plan and financed the entire corrupt buy-back operation with the US$30,000 cash provided to him by his former boss. Further, he was the general manager of GMT, a company that provided bunkering services and hence the corporate vehicle which provided the Appellants with the opportunity to carry out these buy-back transactions. Chua was the operations manager of

GMT and was the one who had proposed the plan to Loh. More importantly, he was the one who had conceived of the plan and had given instructions to Lau and Samsudin. Indeed, Lau would have to seek approval from Chua before any particular buy-back transaction could take place and Chua would be the one to decide on the amount of bribes to be paid. It is apparent to me that there would have been no criminal conspiracy but for their involvement.

71 In *Lim Teck Chye*, the appellant was a director of a bunkering services company. Similar to the present case, the appellant was the mastermind behind a conspiracy to corruptly pay gratification to marine surveyors to falsely certify that the company had supplied the correct quantity and quality of marine oil to their customers *ie*, buy-back transactions. On appeal, a global sentence of six months' imprisonment and a S$240,000 fine was upheld.

72 In *Public Prosecutor v Syed Mostofa Romel* [2015] 3 SLR 1166, the respondent's job was to inspect vessels seeking to enter an oil terminal by issuing inspection reports. If the defects identified were low to medium-risk, the vessel would be allowed to enter the oil terminal, but if the defects were of a high-risk nature, the vessel would only be allowed to enter after the defects had been rectified. The respondent solicited bribes from the captain of a vessel seeking to enter the oil terminal, by alleging that the vessel had several high-risk defects and refusing to allow the vessel entry unless payments were made to him. At the trial below, the respondent was convicted of two charges under s 6(*a*) of the PCA and sentenced to a global sentence of two months' imprisonment. On appeal by the prosecution, Menon CJ enhanced the sentence imposed to a global sentence of six months' imprisonment. In doing so, he noted at [51] that the "maritime industry is a strategic one accounting for up to 7% of Singapore's gross domestic product and 170,000 jobs" and that the "potential loss of confidence in the maritime industry is therefore an aggravating factor".

This concern is equally relevant for a case like the present involving corruption in the bunkering industry.

73 Therefore, accounting for the relative culpabilities of Loh and Chua in this particular criminal conspiracy, and further considering similar sentencing precedents involving corruption in the maritime industry, I find that the six months' imprisonment sought by the prosecution for both Loh and Chua is an appropriate sentence. Accordingly, I set aside the Judge's sentence of three months' imprisonment and impose a sentence of six months' imprisonment on Loh and Chua.

Observations on the use of sentencing precedents where the offence was factually committed

74 I emphasise that I have relied on the sentencing precedents without distinguishing them on the basis that those cases involved factually committed offences unlike the present case. In my view, this must be the practical consequence of my decision above on the proper interpretation of s 31 of the PCA. In sentencing an offender for conspiracy under s 31, where the PCA offence that is the subject of the conspiracy is factually not committed or is not proved to have been committed (though factually it may or may not have been committed), a sentencing judge may nevertheless rely on precedents where the offence is factually committed or is proved to have been committed, but should not calibrate the sentence downwards to account for that difference.

75 In this regard, I note the argument of the Appellants that in a criminal conspiracy where the bribe does not take place or has not been proved to have taken place, there is no way of quantifying the bribe amounts, the wrongful gains or actual losses to the parties involved. Therefore, the court will not be able to ascertain the precise facts on which to sentence the offender (see [20(a)]

above). With respect, I disagree. The known or proved facts of a case do not always provide an entirely complete picture. It may not be known whether or not the bribe has in fact been given. There may be evidential difficulties in establishing whether or not the PCA offence that is the subject of the criminal conspiracy has or has not in fact been committed although the criminal conspiracy itself may have been proved beyond a reasonable doubt. Very often there exist certain factual intricacies that may be left unknown or not established due to evidential difficulties. Be that as it may, the court can, and will, still decide on a sentence based on the known, proven or deemed facts. Just because s 31 of the PCA is to be interpreted to mean that an offender must be sentenced as though he has committed the PCA offence that is the subject of the criminal conspiracy, regardless whether or not he has factually committed or has been proved to have committed the PCA offence, it does not mean that the court must engage in an overly speculative exercise of assuming certain facts where none of those facts exist or have been proved. The court need only rely on the known or proved (including any deemed) facts that are available before it, and this is, in my view, well-illustrated by the sentencing approach taken in the present case.

Conclusion

76 In order to give full effect to the deeming provision in s 31 of the PCA, the proper interpretation must be that an offender who is convicted under s 31 must be punished as though he has committed the PCA offence that he conspired to commit, regardless of whether he has or has not factually committed it. This means that no sentencing discount can be given on the basis that it may have been or is an inchoate offence. This accords with the legislative object behind the PCA, which is to provide a statutory regime for the effectual prevention of corruption in Singapore. Indeed, the practical effect of having a deeming

provision under s 31 will be rendered nugatory if the court were to simply punish on the basis or on a factual assumption that the PCA offence has not been committed as a consequence of the criminal conspiracy.

77 The endeavour to prevent corruption does not end there. In cases like the present which involve a particularly insidious form of corruption, potentially affecting Singapore's international reputation as a hub for maritime services, there is also a need to impose a stiff custodial sentence so as to send a strong deterrent signal to would-be offenders.

78 For all these reasons, I allow the prosecution's appeals.

Chan Seng Onn
Judge

Luke Lee Yoon Tet (Luke Lee & Co) for the first appellant in MA9006/2018/01 and the first respondent in MA9006/2018/02;
Shashi Nathan, Jeremy Pereira and Cathy Pereira (KhattarWong LLP) for the second appellant in MA9007/2018/01 and the second respondent in MA9007/2018/02;
Wee Pan Lee (Wee, Tay and Lim LLP) for the third appellant in MA9008/2018/01 and the third respondent in MA9008/2018/02;
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