Public Prosecutor *v* Ang Seng Thor
[2011] SGHC 134

Case Number	: Magistrate's Appeal No 365 of 2010
Decision Date	: 26 May 2011
Tribunal/Court	: High Court
Coram	: V K Rajah JA
Counsel Name(s)	: G Kannan, Edmund Lam and Ng Yiwen (Attorney-General's Chambers) for the appellant; Wendell Wong, Tay Eu-Yen and Choo Tse Yun (Drew & Napier LLC) for the respondent.
Parties	: Public Prosecutor — Ang Seng Thor

Criminal Procedure and Sentencing

26 May 2011

V K Rajah JA:

Introduction

1 This was an appeal by the Public Prosecutor against the sentences imposed by a District Judge ("the DJ") on the respondent, Ang Seng Thor ("Ang"), in respect of District Arrest Case ("DAC") Nos 20434 and 20435 of 2010 (respectively, "DAC 20434" and "DAC 20435"). Ang pleaded guilty to those two charges, both of which concerned offences of corruptly giving gratification to agents contrary to s 6(*b*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA"), which carries a maximum sentence of five years' imprisonment or a fine of $100,000 or both. Two other corruption charges under the same section and two charges of giving false statements under s 57(1)(*k*) of the Immigration Act (Cap 133, 1997 Rev Ed) were taken into consideration for the purposes of sentencing. The DJ sentenced Ang to a fine of $100,000 (the maximum fine) for each charge, in default five months' imprisonment per charge. The total sentence imposed by the DJ for the two charges was therefore a fine of $200,000, which Ang has paid in full. The DJ also noted that by operation of law under s 154(1) read with s 154(4)(*a*) of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act"), Ang would be disqualified from acting as a director of a company or foreign company for five years from the date of his conviction.

2 After hearing submissions by the Prosecution and Ang, I allowed the appeal and varied the sentence to a term of six weeks' imprisonment and a fine of $25,000 per charge, with both imprisonment terms to run consecutively. The total sentence was therefore 12 weeks' imprisonment and a fine of $50,000. By operation of law, Ang was also disqualified from acting as a director from the date of conviction to the end of a period of five years from the date of his release from prison (pursuant to s 154(1) read with s 154(4)(*b*) of the Companies Act). Having given brief oral grounds at the hearing, I now set out the detailed grounds of my decision.

Facts

Ang's offences

3 At the time of the offences, Ang was the chief executive officer ("CEO") and, together with

one Tok Kian You ("Tok"), joint managing director of AEM-Evertech Holdings Ltd ("AEM"). Tok was also the executive chairman of AEM. AEM was a company in the business of supplying equipment and precision tools to semiconductor manufacturers and had been listed on the mainboard of the Singapore Exchange since 19 December 2000.

4 Sometime in 2003, Ang was introduced to one Ho Sze Khee ("Ho"), an assistant engineer employed by Seagate Technology International ("Seagate"), by one Ng Soon Chai Ven ("Ven"), the AEM sales manager in charge of the Seagate account. Ven informed Ang that Ho wanted kickbacks in exchange for Seagate ordering goods from AEM, and told Ang that he could contact Ho directly about such an arrangement.

5 Ang contacted Ho and acceded to Ho's request for a 15% kickback payment for each purchase order raised by Seagate to AEM. Ho had hinted that he would refer Seagate's business to other companies if he did not receive such kickbacks. Ang admitted that he intended to corruptly pay these bribes to Ho, an agent of Seagate, in exchange for Ho showing favour to AEM through his influence over Seagate's orders.

6 Sometime in March 2005, Ang met Ho at a car park near Ang Mo Kio Avenue 10, Singapore. Ang handed Ho $97,158 in cash in recognition of purchase orders received by AEM from Seagate with an aggregate sales value of $647,720. This act of giving gratification to Ho was the subject of the charge (the "Seagate Charge") in DAC 20434 under s 6(*b*) of the PCA.

7 The two corruption charges taken into consideration similarly concerned Ang giving Ho gratification of the sums of $24,650.10 on 19 October 2004 (DAC No 20432 of 2010) and $35,700 on 1 February 2005 (DAC No 20433 of 2010).

8 The other charge proceeded with concerned an earlier incident. In early 2003, AEM wanted to sell four inspection machines to Infineon Technologies Malaysia Sdn Bhd, Malacca ("Infineon"). This sale was worth about $1m. Tok learned that there were many competitors interested in supplying such machines to Infineon. Tok and Ang therefore discussed the issue and agreed that they would offer a bribe of $50,000 to one Tan Gek Chuan ("GC Tan"), a director of Infineon, to secure the sale of four inspection machines by AEM to Infineon.

9 With the common intention to induce GC Tan, an agent of Infineon, to show favour to AEM by influencing Infineon's purchasing decision, Tok and Ang met GC Tan at a hotel in Malacca, Malaysia. The three of them discussed the sale of the inspection machines. At the end of their meeting, Tok handed GC Tan $50,000 in cash, while Ang excused himself to avoid embarrassment to GC Tan. GC Tan indicated that he would ensure that Infineon would order the four inspection machines from AEM, which Infineon subsequently did. This act of giving gratification to GC Tan was the subject of the charge (the "Infineon Charge") in DAC 20435 under s 6(*b*) read with s 37(1) of the PCA, read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed).

10 Under the proceeded charges, a total of $147,158 in bribes was given. If the bribes in the charges taken into consideration were included, the total would be $207,508.10.

Ang's disclosures

11 Because of their relevance to Ang's mitigation, I will set out the events that followed Ang's offences in some detail. On 26 October 2005, Ang wrote a letter to the chairman of AEM's board of directors which was copied to the company's non-executive directors. In this letter he referred to his earlier notification of the board of certain "grave and troubling discoveries" that he had made in

relation to certain officers in AEM, which he proceeded to elaborate. Among the issues that he highlighted was an unauthorised trip by one, Kammy Choo and one, CM Wong, to Bangkok, Thailand. He believed this was for the purpose of instructing the representative of a company referred to as "Halotech" to engage in suspicious business practices on behalf of AEM – these included creating retrospective documents concerning certain commissions which were not to be discussed with anyone at AEM. In addition, Ang produced a table highlighting various irregular invoices for payments to Halotech covering commission payments to a number of companies (including Infineon and Seagate). Significantly, Ang emphasised that the main approving authority for these questionable payments was Tok. Ang also alleged in his letter that Tok had made unauthorised purchases of a vehicle and real property using AEM's funds and that Tok had also made unauthorised reimbursement claims to AEM for personal travel and entertainment. Ang ended his letter by encouraging AEM's board of directors to immediately investigate the matters he had raised.

12 On 14 November 2005, AEM sent a letter to Ang terminating his employment and appointments in AEM and in the AEM Group of companies. Between November 2005 and 7 July 2006, Ang sent a number of follow-up letters to AEM's board inquiring as to what action the company would take in relation to Tok and Kammy Choo based on Ang's reports.

13 Between July and October 2006, AEM engaged the firm of Ernst & Young ("EY") to investigate the allegations made by Ang. Between 10 October 2006 and 20 November 2006, a number of letters were exchanged between Drew & Napier LLC (solicitors for Ang), who were requesting a copy of EY's report and associated updates, and Allen & Gledhill LLP (solicitors for AEM), who maintained AEM's position that Ang was not entitled to view EY's report.

14 In or around December 2006, Ang made a series of disclosures to ST Microelectronics Group ("ST Micro"), a client of AEM. In correspondence up to at least 26 May 2007, Ang provided ST Micro with information about its employees who took bribes from AEM. Ang also named AEM officers and employees who were involved in this scheme of bribery, including Tok.

15 ST Micro notified the Corrupt Practices Investigation Bureau ("CPIB") of the matters disclosed by Ang. CPIB proceeded to commence investigations into the conduct of AEM and a number of its officers. Ang was among those placed under investigation and was interviewed by CPIB on 8 May 2007. Ang cooperated with CPIB's investigations, volunteering (through his solicitors) evidence relevant to acts of corruption carried out within AEM. Ang also offered himself as a prosecution witness in proceedings arising from these investigations.

Decision of the District Court

16 The DJ's decision was set out in his written Grounds of Decision (see *Public Prosecutor v Ang Seng Thor* [2010] SGDC 454 ("the GD")), which included an Appendix restating his brief oral grounds ("the GD Appendix"). His grounds are summarised in the following paragraphs.

17 The DJ interpreted the case of *Lim Teck Chye v Public Prosecutor* [2004] 2 SLR(R) 525 ("*Lim Teck Chye*") at [67]–[68] as supporting two separate sentencing benchmarks for corruption offences. For corruption involving public servants and public bodies, the benchmark was a custodial sentence. For private sector or commercial corruption, the benchmark was a fine unless the corruption had an impact on the public (the "public service rationale"), in which case a custodial sentence was appropriate (see [17] of the GD and [9] of the GD Appendix).

18 The DJ distinguished the precedents cited by the Prosecution in favour of a custodial sentence on the basis that such sentences were imposed on receivers of bribes rather than givers of bribes.

The DJ relied on the case of *Chua Tiong Tiong v Public Prosecutor* [2001] 2 SLR(R) 515 ("*Chua Tiong Tiong*") at [21] to support this approach. The DJ considered that the size of Ang's bribe ought not to correlate directly to the punishment as he did not personally benefit more from larger bribes (see [20] of the GD and [13]–[17] of the GD Appendix).

19 The DJ regarded Ang's culpability as low as he was not the initiator of the bribe in the Seagate Charge and had been threatened with the loss of Seagate's business for AEM. In relation to the Infineon Charge, the DJ regarded Ang as playing a "passive role", not being the "pivotal figure in the transaction" as compared to Tok, who played a more substantial role (see [10]–[11] of the GD Appendix).

20 The DJ considered the size of the bribes, noting that normally the sums involved would justify a custodial sentence as the maximum fine would be an inadequate punishment. However, the DJ considered it unfair to impose a custodial sentence here as (see [12]–[17] of the GD Appendix):

(a) Ang was a giver of bribes and not a receiver, and therefore did not gain any additional benefit from the large size of the bribes;

(b) although the sums making up the bribes were fairly substantial, this was due to the large size of the underlying transactions;

(c) the bribes were for AEM's benefit and did not translate into direct benefit for Ang, despite his position as CEO; and

(d) Ang would bear any punishment under these charges even though the money for the bribes came from AEM, not him.

21 The DJ regarded Ang's status as CEO and the fact that AEM was a listed company as aggravating factors (see [18] of the GD Appendix). However, the DJ considered that there were a number of mitigating factors in Ang's favour, including his cooperation with the authorities, agreement to be a prosecution witness and an early plea of guilt (see [19] of the GD Appendix).

22 An important point in mitigation was the DJ's finding that Ang was a "whistleblower" whose voluntary disclosure of corrupt transactions in AEM had made a vital contribution towards the discovery and punishment of the corruption. The DJ found that Ang had done this out of a "commitment to do the right thing". This was treated as a crucial factor tipping the sentencing decision in favour of a non-custodial punishment (see [22] of the GD and [21]–[23] of the GD Appendix).

23 Taking all these factors into account, the DJ arrived at the final sentence of the maximum fine of $100,000 for each charge, in default five months' imprisonment per charge, to give a total sentence of $200,000 in fines, in default ten months' imprisonment. A five-year disqualification from acting as a director was also imposed on Ang by operation of law under s 154(1) read with s 154(4)(*a*) of the Companies Act.

The Public Prosecutor's appeal against sentence

24 The Public Prosecutor appealed for a short custodial sentence to be imposed on Ang in addition to the imposition of a fine and disqualification to act as a director. The reasons given for the appeal were that the DJ had erred in:

(a) finding that Ang was a passive or non-pivotal actor in the offences;

(b) finding that Ang did not benefit from the offences;

(c) giving insufficient weight to the size of the bribes;

(d) giving excessive weight to Ang's status as a "whistleblower";

(e) finding that Ang's culpability was reduced as he was a giver of bribes and not a receiver;

(f) failing to find that the public service rationale had been engaged on the facts; and

(g) not giving enough weight to the aim of general deterrence.

The Prosecution also made the general argument that the sentences imposed on Ang were manifestly inadequate.

25 In response, Ang submitted that the DJ was justified in imposing a non-custodial sentence because that correctly accorded a mitigating premium to Ang's acts of whistleblowing, and because the DJ had accurately calibrated the aggravating and mitigating factors in arriving at his decision.

Reasons for allowing appeal

26 In *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 ("*ADF*") at [17]–[18], I restated the well-known standard for appellate intervention in sentencing decisions as follows:

> 17 In *PP v UI* [2008] 4 SLR(R) 500, this Court summarised the legal principles relating to appellate review of sentences. The Court stated at [12] that an appellate court will not ordinarily disturb the sentence imposed by the trial court except where it is satisfied that:
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> (a) the trial judge erred with respect to the proper factual basis for sentencing;
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> (b) the trial judge failed to appreciate the materials placed before him;
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> (c) the sentence was wrong in principle; or
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> (d) the sentence was manifestly excessive or manifestly inadequate, as the case may be.
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> 18 In relation to the question of what is manifestly excessive or manifestly inadequate, this Court accepted that the threshold would only be met if there was a need for a substantial alteration to the sentence rather than an insignificant correction to remedy the injustice.

27 In this case, I found that the DJ had erred in both his treatment of the facts relevant to sentencing and his interpretation of the applicable sentencing principles. I will address the latter first.

Relevance of the public-private distinction in corruption offences

28 The DJ held that there was a hard-edged distinction between public sector corruption and private sector corruption which justified different sentencing benchmarks or starting-points (at [17] of the GD):

> What are the existing guidelines and judicial concerns governing this case? In the case of *Lim*

> *Teck Chye v PP* [2004] 2 SLR(R) 525, the then Chief Justice Yong Pung How used the term "public service rationale" to refer to the concern in corruption cases where the integrity of public service and the administration of justice would be jeopardized by the act of corruption involved. The Chief Justice recognized the apparent dichotomy of corruption cases occurring in the private sector or taking place in a 'commercial' context which usually are adequately punished with substantial fines, and corruption cases involving public servants and public bodies which warrant custodial sentences. He went on to distil the essence of this bifurcation and how it is to be applied properly …

The DJ then quoted from *Lim Teck Chye* at [67]–[68] (set out at [32] below) before continuing (at [18] of the GD):

> Guided by the analysis given in the case of [*Lim Teck Chye*], there is clearly a discernible difference in the sentencing of cases involving private commercial transactions and those where there is a public service rationale involved. Based on the facts and circumstances of our case (these had been highlighted in my oral grounds at paragraph 9 of [the GD Appendix), which occurred in a commercial context, I came to the conclusion that the corrupt actions of the accused did not have a negative bearing upon the public service rationale.

The DJ stated at [9] of the GD Appendix that "[i]n the absence of a public service rationale, the sentence leans towards a non-custodial punishment."

29 It is first necessary to clarify what the phrase "public service rationale" meant as it was used in *Lim Teck Chye*, which will put the DJ's reasoning in the proper light. Yong Pung How CJ mentioned in *Lim Teck Chye* at [66] that the public service rationale was articulated in his judgment in *Chua Tiong Tiong*. That case concerned the appeal against sentence of an infamous illegal moneylender who had been convicted of corruptly giving gratification to a police officer in exchange for assistance concerning his illegal moneylending activities. In *Chua Tiong Tiong* at [17], Yong CJ stated of:

> I accepted the grave issue of public interest at stake in the present case. Eradicating corruption in our society is of primary concern, and has been so for many years. This concern becomes all the more urgent where public servants are involved, whose very core duties are to ensure the smooth administration and functioning of this country. Dependent as we are upon the confidence in those running the administration, any loss of such confidence through corruption becomes dangerous to its existence and inevitably leads to the corrosion of those forces, in the present case the police force, which sustain democratic institutions. I highlighted this in *Meeran bin Mydin v PP* …, approving the words of the trial judge in that case (at [18]):
>
> > … Acts of corruption must be effectively and decisively dealt with. Otherwise the very foundation of our country will be seriously undermined. …

30 Simply put, the public service rationale as framed in *Chua Tiong Tiong* is a restatement of the common-sense proposition that corruption offences involving public servants are especially harmful because they erode the public's confidence in the essential institutions of government. In the case of *Public Prosecutor v Chew Suang Heng* [2001] 1 SLR(R) 127 ("*Chew Suang Heng*") Yong CJ described the application of this proposition in the sentencing context (at [9]–[11]):

> 9 … There is no doubt that attempting to bribe a law enforcement officer and interfering in the proper course of police investigations is a serious offence. Generally, corruption offences involving law enforcement officers or other public servants attract harsher penalties and custodial sentences as compared to similar offences committed in commercial dealings and in the private

sector.

10 For corruption offences under the PCA which involve government servants, the norm is a custodial sentence and it is departed from where the facts are exceptional. …

11 There is no doubt that an element of public interest exists in corruption offences involving the bribery of a public servant and that the courts have taken a stern view of such offences. In view of this public interest in stamping out bribery and corruption in the country, especially in the public service, a deterrent sentence for such offences is justified. The severity of the sentence imposed, however, would depend on the facts of each individual case.

31 In *Lim Teck Chye*, the appellant relied on [9] of *Chew Suang Heng* to submit that "corruption offences that occur in a commercial context generally attract non-custodial sentences" (see *Lim Teck Chye* at [62]). The facts of *Lim Teck Chye* concerned the appellant's participation in a conspiracy to pay corrupt gratification to certain marine surveyors in exchange for false survey reports. These reports stated that the appellant's bunkering company had supplied the correct quantity and quality of marine fuel to its customers, when in fact it had not. Yong CJ rejected the appellant's argument and stated the general principles governing whether a corruption offence had crossed the custody threshold at [65]:

The appellant had also cited *PP v Yeoh Hock Lam* [2001] SGDC 212, unreported judgment dated 9 July 2001. The district judge presiding in that case had juxtaposed corruption in the public arena with that in the private sector (at [22] and [24]):

…

Where the amount of gratification received is relatively low, and where it is not in excess of $30,000, a substantial fine will *usually be adequate* punishment. The offender will have to forfeit his ill-gotten gratification as well. This is the established sentencing practice where the offenders are not public officers and there is no taint on the integrity of the public service. I did not see any justification to impose a different sentence on the accused.

[emphasis added]

It was clear that the district judge's statements did not stand for the proposition that corruption in a commercial context *cannot* be punished with imprisonment, although it *usually* is adequate [to impose a substantial fine]. Indeed, the PCA expressly provides for the imposition of imprisonment sentences regardless of whether the offence was committed in the public arena. ***Of course, whether a custodial sentence is warranted in a particular case is determined upon a careful consideration of sentencing principles such as the public interest and other policy considerations, as well as the gravity of the offence including the particular facts and circumstances thereof*** : *PP v Tan Fook Sum* [1999] 1 SLR(R) 1022.

[emphasis in original in italics; emphasis added in bold italics]

This balancing approach was similar to that taken recently in *Zhao Zhipeng v Public Prosecutor* [2008] 4 SLR(R) 879 ("*Zhao Zhipeng*"), which was decided in the context of football match-fixing corruption. At [32] of that case, Chan Sek Keong CJ cited with approval, *Sentencing Practice in the Subordinate Courts* (LexisNexis, 2nd Ed, 2003) at p 814, which stated:

In deciding if the custody threshold has been breached, the main determinant would be the

mischief or likely consequence of the payment or acceptance of the bribe (*eg* did the corruption undermine the administration of justice, *etc*).

32 After making the above statement, Yong CJ then proceeded to clarify the application of the public service rationale in *Lim Teck Chye* at [66]–[68]:

> 66 The distinction drawn by the appellant between corruption offences in the context of the private sector and/or commercial dealings *vis-à-vis* corruption offences involving government servants and officers of public bodies was stiff and artificial. The general statement that I made in [*Chew Suang Heng*] was based on the presumption that public servants and officers of public bodies who commit a corruption offence in the course of their duties would have breached the public service rationale articulated in [*Chua Tiong Tiong*]. This presumption was adopted by the Legislature in s 8 of the PCA, which provides:
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> > Where in any proceedings against a person for an offence under section 5 or 6, it is proved that any gratification has been paid or given to or received by a person in the employment of the Government or any department thereof or of a public body by or from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body, that gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proved.
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> 67 It cannot, however, be said that only corruption offences committed by public servants or officers of public bodies run afoul of the public service rationale. Corruption offences committed in the private sector may do so as well, although there is no similar presumption that they do. Private corporations today provide many public service functions; the direct and indirect impact that these private sector organisations have on the lives of our citizens as well as the smooth running and administration of this country can be palpable. An example where a private sector organisation can have a direct impact on such matters is where it is awarded the tender for a government contract for the provision of public services and/or utilities. The impact of corruption offences on the public service rationale, as articulated in [*Chua Tiong Tiong*], may therefore be similarly applied to include instances where it is directly or indirectly infringed by private sector organisations. Of course, there will be cases where corruption offences in the private sector have little, if any, bearing on the public service rationale, and these cases will naturally be treated more leniently. These considerations make it untenable to draw a strict line between corruption offences committed in the private sector and those committed in the public arena.
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> 68 I was of the view that the corrupt actions of the appellant, although in the context of the private sector, had a negative bearing upon the public service rationale. As the district judge found, the appellant's actions had the potential to adversely affect public confidence in the independence of marine surveyors and Singapore's bunkering industry. His actions were particularly reprehensible given that the appellant was a prominent member of the bunkering industry. …

In these passages, Yong CJ drew an analogy with the presumption concerning criminal liability in s 8 of the PCA to explain the sentencing approach taken in *Chew Suang Heng* for offences where the public service rationale was relevant. *He also extended that rationale to cover certain private sector offences*.

33 I would summarise the somewhat lengthy discussion at [29]–[32] above into the following propositions:

(a) The public service rationale refers to the public interest in preventing a loss of confidence in Singapore's public administration (see *Chua Tiong Tiong* at [17]–[19]).

(b) Where there is a risk of this harm occurring, a custodial sentence is normally justified (see *Chew Suang Heng* at [9]–[11]).

(c) This sentencing principle is presumed to apply where the offender is a government servant or an officer of a public body, but it may also apply to private sector offenders where the subject-matter of the offence involves a public contract or a public service. This includes private sector offences that concern regulatory or oversight roles such as marine surveying (see *Lim Teck Chye* at [66]–[68]).

(d) Although triggering the public service rationale is one way in which a private sector offender may be subject to a custodial sentence, it is not the *only* way: the custody threshold may be breached in other circumstances, depending on the applicable policy considerations and the gravity of the offence as measured by the mischief or likely consequence of the corruption (see *Lim Teck Chye* at [65] and *Zhao Zhipeng* at [32]). In addition, factors such as the size of the bribes, the number of people drawn into the web of corruption and whether such conduct was endemic will all be relevant to the consideration of whether a custodial sentence is justified.

At the end of the day, it must be borne in mind that the main sentencing considerations in corruption cases are deterrence and punishment (see, to similar effect, *Regina v Gordon Foxley* (1995) 16 Cr App R (S) 879 at 885). Indeed, the preservation of a corruption-free environment has always been a cornerstone of governance in Singapore. It would not be wrong to say that in Singapore deterrence is always a relevant sentencing consideration in corruption cases.

34 I should briefly point out that although Yong CJ suggested in *Lim Teck Chye* at [68] that the public service rationale included cases occasioning a loss of confidence in a strategic industry such as the bunkering and maritime industry, subsequent cases such as *Wong Teck Long v Public Prosecutor* [2005] 3 SLR(R) 488 ("*Wong Teck Long*") and *Zhao Zhipeng* have clarified that such facts form a separate aggravating factor justifying general deterrence (see *Wong Teck Long* at [36] in reference to the banking and finance industry). This factor often but *not always* justifies a custodial sentence (see *Zhao Zhipeng* at [30]–[34] in the context of professional football). To bring this factor under the definition of the public service rationale strikes me as making the latter too wide.

35 Proposition (d) at [33] above was especially relevant to the present appeal. It should be clear at this stage that the DJ made the same error as the appellant in *Lim Teck Chye*, which was to draw a "stiff and artificial" distinction between public and private sector corruption for the purposes of sentencing (to use Yong CJ's words in *Lim Teck Chye* at [66]). The error lay in treating the public service rationale as an exhaustive or even the primary ground for imposing a custodial sentence on a private-sector corruption offender. In fact, the correct approach should have been the familiar balancing exercise described in *Lim Teck Chye* at [65] (see [31] above), for the following reasons.

36 At common law, the offence of bribery was limited to persons acting in an *official* capacity or performing *public* functions (see David Lanham *et al*, *Criminal Fraud* (The Law Book Company Limited, 1987), at pp 202 to 204). Although most jurisdictions have since statutorily extended the offence to private sector bribery (while the United Kingdom itself has, in the Bribery Act 2010 (c 23) (UK) ("Bribery Act 2010"), ceased to draw a distinction between public and private sector bribery), the historical roots of the offence may still be observed in legislative provisions such as s 8 of the PCA which provide for a presumption of corruption in cases involving public servants or bodies. However, the fact that, historically, there was a public-private distinction in the *definition* of the offence of

bribery did not translate into a similar distinction when it came to the *sentencing* of the offence.

37 For instance, the sentencing approach of the English courts in corruption cases prior to the Bribery Act 2010 did not distinguish between public sector and private sector corruption (see Colin Nicholls *et al*, *Corruption and Misuse of Public Office* (Oxford University Press, 2006) at para 2.71). Similarly, the Court of Appeal of Hong Kong in *R v Wong Tat-Sang & ors* [1985] HKCA 196 declared forcefully (at [4]) that, for the purposes of sentencing, it could not "*for a moment accept the suggestion that bribery in the private sector is in any way to be regarded as less culpable than bribery in the public sector*" [emphasis added]; see also *HKSAR v Lau Yee Lai* [1999] HKEC 351.

38 Further support for a consistent approach to sentencing in both private and public sector corruption cases was to be found in the case of *Chua Kim Leng Timothy v Public Prosecutor* [2004] 2 SLR(R) 513 ("*Timothy Chua*"). This appeal was heard and decided on the same day as *Lim Teck Chye* by the same judge, *viz*, Yong CJ. The grounds of decision in both cases were later released on the same day. Their subject matter was very similar: both cases involved bunkering companies paying corrupt gratification to independent surveyors in exchange for favourable survey reports which would be used to disguise dishonest business practices. The appellant in *Timothy Chua*, like the one in *Lim Teck Chye*, attempted to rely on *Chew Suang Heng* to argue that no custodial sentence should be imposed on him as his offences were committed in a purely commercial context. Yong CJ, as he did in *Lim Teck Chye*, rejected the artificial distinction between the public and private contexts underlying this argument and upheld a custodial sentence based entirely on the high culpability of the appellant. In doing so he did not make any reference to the public service rationale (see *Timothy Chua* at [23]–[27]).

39 To conclude this discussion, I would say that the public-private distinction in corruption cases has sometimes been overstated. It should be absolutely clear that there is no presumption in favour of a non-custodial sentence for private sector corruption cases. While Yong CJ stated at [65] of *Lim Teck Chye* that such cases are "*usually*" [emphasis in original] adequately dealt with through substantial fines, that was an endorsement of the District Court's approach of *Public Prosecutor v Yeoh Hock Lam* [2001] SGDC 212 ("*Yeoh Hock Lam*") (at [24]) specifically for cases "[w]here the amount of gratification received is relatively low". It was certainly not intended to be a general statement of principle. The DJ misinterpreted *Lim Teck Chye* in stating otherwise at [17] of the GD (see [28] above).

40 I take the view that there is a firm need for the courts to set the correct moral tone for business. There are different, and sometimes overlapping, theories as to what makes bribery morally wrong and therefore worthy of criminalisation (see generally Stuart P Green, "What's Wrong with Bribery", in *Defining Crimes, Essays on the Special Part of the Criminal Law* (R A Duff and Stuart P Green eds) (Oxford University Press, 2005) at p 143). P Alldridge, "The Law Relating to Free Lunches" (2002) 23 Company Lawyer 264, has suggested (at p 267) that the harm of private sector corruption lies in the distortion of the operation of a legitimate market, preventing competition in the market from functioning properly, to the detriment of the eventual consumer, who will have to bear the cost of the bribe. The Law Commission of England and Wales, *Reforming Bribery* (Law Com No 313) (The Stationery Office, 2008), took the view (reflected in the Bribery Act 2010) that the harm of bribery was ultimately referable to the improper conduct of the recipient of the bribe, in performing a function or activity in breach of the good faith, impartiality or trustworthiness reasonably expected of him.

41 Both these perspectives are persuasive, and, in my opinion, there is clearly a public interest in the private sector maintaining a reputation for being corruption free, with business being conducted in a fair and transparent manner so as to ensure that the public's legitimate expectations of *bona fides*,

commercial even-handedness and economic welfare are not prejudiced, and the efficient operation of the market is not disrupted. These being key factors in attracting and keeping both domestic and foreign investment in our country, the health and stability of the wider economy would be harmed if a culture of corruption was allowed to take root here (see Paolo Mauro, "Corruption and Growth" (1995) 110 Quarterly Journal of Economics 681, and Paolo Mauro, "The Persistence of Corruption and Slow Economic Growth" (International Monetary Fund, IMF Working Paper, WP/02/213)).

42 With this in mind, I would say that where cases of private sector corruption involve managers (especially senior managers) or concern corrupt influence over large or otherwise important business transactions, this would add greatly to the seriousness of the offence. Courts should then seriously consider imposing custodial sentences to deter the establishment of a corrupt business culture in Singapore. Aggravating factors that tend to trigger the same deterrent reasoning include the fact that offences were systematic (as with a company or even industry-wide scheme of corruption) or that they occurred over a long period of time, as opposed to one-off incidents. There may or may not be many such cases, and all the facts must be taken into account, but there must be no suggestion that the courts are more indulgent with private sector offenders in serious corruption cases merely because the public service rationale is not directly relevant.

Relevance of the distinction between givers and receivers of bribes

43 The DJ drew what he perceived to be a clear distinction in punishment between givers and receivers of bribes at [20] of the GD, which reads as follows:

> It has to be noted that the sentencing precedents cited by the Prosecution in support of a custodial sentence (at paragraphs 18 to 23 of Prosecution's Submissions on Sentence and in Annex K to the Prosecution's Bundle of Authorities) for cases involving substantial sums of monies *were all for the sentencing of receivers of bribes*. It suffices for us to bear in mind the words of the former Chief Justice Yong Pung How in [*Chua Tiong Tiong*]:
>
> > "21 ...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. ..."
>
> [emphasis added]

44 Further explanation of the DJ's reasoning was set out in the GD Appendix at [13], where he stated that:

> When we consider the significance of the size of a bribe in a corruption case, there is a discernible difference to be noted for the giver and the receiver. I know it takes two hands to clap and I am fully aware of the starting position that the giver and receiver should be equally culpable. But that is only the starting position. It is always important to examine the circumstances of each case in order to get the right balance.

He then proceeded to propose that for *receivers* of bribes, "the size of the bribe received has a direct bearing on the punishment to be meted out" (at [14] of the GD Appendix) as it represents the benefit received from the offence and therefore their culpability. However, for *givers* of bribes, at least on these facts, the size of the bribe ought not to be "linked directly to the punishment to be borne" (at [17] of the GD Appendix), for the reasons summarised at [20] above.

45 Despite his professed awareness of the principle that givers of corrupt gratification generally bear equal culpability to receivers (as stated by Yong CJ in *Chua Tiong Tiong* at [21]), the DJ seems

to have unfortunately strayed from this principle. To the extent that his view was based on a finding of fact that Ang, as a giver of bribes, did not benefit directly from the offences, I did not accept the DJ's reasoning as correct, and my reasons are set out at [53] below. It would suffice to state at this juncture that taken to its logical conclusion, his reasoning seemed to imply a general rule that a giver of a bribe is always less culpable than a receiver of the same bribe, since the blameworthiness of the giver is not proportional to the size of the bribe. This distinction would be, if nothing else, a direct contradiction of the principle stated in *Chua Tiong Tiong*, a decision which was binding on the DJ. In addition, however, I considered that the distinction was wrong in principle.

46 First of all, I should point out that the size of the bribes in a corrupt gratification offence is not only linked to the *culpability* of the offender. Rather, it is also related to the *harm* caused by the offence (see the discussion of harm and culpability as basic sentencing factors in *Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753 at [46]–[50]). One of the reasons for the prohibition on corruption is society's expectation that transactions and decisions, whether in the private or public sphere, are carried out fairly and transparently (see [41] above). This expectation is intrinsically linked with the public interest in such fair dealing. The higher the amount of a bribe, the greater the corrupt influence exerted on the receiver. This in turn presumptively leads to a greater subversion of the public interest: larger bribes generally lead receivers into graver transgressions. For this reason, the size of a bribe is assessed along with the importance of the transaction sought to be influenced as an important factor relating to the harm caused by a corruption offence. As an objective harm-related factor, the size of the bribe is equally relevant to the sentencing of givers and receivers of bribes, contrary to the DJ's approach.

47 As for the relevance of the size of bribes to culpability, the DJ seemed to have fallen into a basic misunderstanding of the giver's interest in the enterprise of corrupt gratification. In most cases, the size of the bribe demanded or accepted reflects the greed of the receiver for monetary gain and therefore his culpability (see *Zhao Zhipeng* at [37]–[39], where a receiver of bribes was found to be less culpable due to a lack of personal greed). In addition, it usually and equally reflects the level of influence or advantage the giver wishes to secure through the bribe. Larger bribes are almost always given to obtain greater illegitimate advantages from the receiver, which normally reflects more personal gain sought by the giver. Such a motivation would ordinarily indicate a higher degree of culpability. Of course, the link between the size of the bribes and culpability would have to be established on the facts of each case.

48 The size of the bribe may be material to sentencing in another way. In cases of corruption involving large sums of money, the offenders are often persons of some means, to whom the threat of a monetary fine of up to $100,000 (as prescribed by s 6 of the PCA) would be a mere slap on the wrist that is insufficiently punitive or deterrent to meet the relevant sentencing considerations in corruption cases. As I said in *Public Prosecutor v Wang Ziyi Able* [2008] 2 SLR(R) 1082 (at [29]):

> It should be acknowledged that fines for the well heeled often fail to amount to either sufficient or meaningful deterrence. … Sentencing judges should painstakingly seek to ensure that the punishment adequately addresses the harm caused by the offence in these circumstances.

49 Beyond erring in principle in this area, the DJ was also mistaken in applying the applicable authorities. While it is true that the cases referred to at [20] of the GD and cited by the Prosecution below all related to custodial sentences imposed on receivers of bribes, the Prosecution's submissions also referred to *Lim Teck Chye*, which concerned a giver of bribes in the private sector who was given a custodial sentence. The DJ seemed to have overlooked this significant aspect of *Lim Teck Chye*.

Factual basis for sentencing

Factual basis for sentencing

Ang's culpability

50 Having addressed the areas where the DJ's sentencing approach were wrong in principle, I turned to his findings on the relevant facts. The first set of findings concerned Ang's level of culpability in the offences. The DJ made two findings relevant to culpability. The first of these was that the particular roles played by Ang in the Seagate Charge and the Infineon Charge pointed to a low level of culpability (see [9] above).

51 I did not agree with this finding. With respect to the Seagate Charge, one ought to note that Ang was the only person from AEM involved in the decision to give the bribe. He took the initiative to contact Ho to accede to the latter's request for kickbacks. While there may have been an element of commercial pressure involved (which may partly explain the DJ's reference to [21] of *Chua Tiong Tiong*, cited at [43] above), I did not think that this pressure was sufficient to substantially reduce Ang's culpability. After all, it is part of the normal cut and thrust of business that clients or suppliers often threaten to take their business elsewhere in order to extract favourable concessions. The situation was not at all comparable with, for instance, that in *Zhao Zhipeng*. There, mitigation was granted because the offending football player, a foreigner, was found to have accepted bribes under the "dominion" of his team manager, on whom he was largely or entirely dependent for his livelihood in Singapore, and in circumstances where the offender was far away from his support network of friends and family (see *Zhao Zhipeng* at [38]–[39]).

52 As for the Infineon Charge, while Tok might have played a major role in the transaction, Ang admitted that the decision to give a bribe was jointly taken between him and Tok, who were both joint managing directors of AEM. Both of them travelled to Malacca to carry out the corrupt transaction. Ang fully participated in the whole process of bribing short of physically handing the money over to GC Tan. For these reasons, I found that for both charges, Ang's role disclosed a high degree of culpability.

53 The DJ's second finding on culpability was that Ang's culpability did not have direct correlation to the size of the bribes indicated (see [20] above). I did not accept his reasoning. As discussed above at [43]–[49], the DJ was wrong in principle in finding that the culpability of givers of bribes does not correspond with the size of the bribes. The DJ also made the related finding that Ang did not benefit directly from the bribes, besides some potential reputational gain on his part as CEO of AEM. This was not correct. In the course of submissions, I was informed by counsel for Ang that Ang was the owner of 10% of the shares of AEM at the material times. Under AEM's profit-sharing scheme, he was entitled to a maximum of 15% of a certain percentage of AEM's net profit before tax (ranging from 6% to 12%). He personally stood to benefit monetarily from any illicit business advantage gained by AEM through the bribes. All these considerations indicated a higher degree of culpability than that assessed by the DJ.

54 Finally, the DJ stated that the "principle of proportionality" should operate as between Ang and AEM considering that the money came from AEM for AEM's benefit. I could only infer that the DJ was making a comparison between the relative blameworthiness of AEM and Ang, but if so, I did not quite see the point of such a comparison. For one thing, AEM's part in this affair, if any, has not been determined and is therefore irrelevant for present purposes. Moreover, any potential culpability on the part of AEM is separate from that of Ang. Ang's high degree of culpability was shown in his role in giving the bribes (see [51]–[52] above); the source of the money was immaterial to that issue.

Aggravating and mitigating factors

55 The DJ acknowledged that Ang's position as CEO of AEM and the fact that AEM was a listed company were aggravating factors. He also recognised several mitigating factors, such as Ang's cooperation with the authorities, his agreement to be a prosecution witness and his early plea of guilt (see [21] above). I saw no reason to disagree with these findings.

56 However, it was the DJ's characterisation of Ang as a "whistleblower" deserving a weighty discount in mitigation that caused me grave concern. The DJ thought that Ang, motivated by altruism, had voluntarily disclosed information that started a process of investigation into AEM's affairs, eventually leading to the uncovering of secret corruption within the company (see [22] above).

57 The mitigating value in an offender surrendering himself to the authorities even before investigations have caught up with him was recognised by Yong CJ in *Public Prosecutor v Siew Boon Loong* [2005] 1 SLR(R) 611 at [15]–[18]. It stands to reason that if there is mitigating value in proactively disclosing one's own crimes to the authorities, there must be even more in disclosing the crimes of one's accomplices at the same time. The public interest in such disclosures, especially for crimes which are usually difficult to detect, is obvious and needs no further elaboration.

58 It is true that our courts have not previously had the opportunity to consider in detail what exact mitigating value should be given for whistleblowing. However, I took the view that this was not a case that required an explication of the applicable principles for such cases. The reason for this was that I did not accept that Ang, factually speaking, deserved the honorific distinction of being called a "whistleblower". While I do not propose to offer an exhaustive definition of the term here, some key features distinguished Ang from the archetypical whistleblower.

59 First of all, Ang did not directly implicate himself in his initial October 2005 disclosures to AEM's board of directors. Those disclosures focused mainly on alleged wrongdoings by Tok and to a lesser extent Kammy Choo. He only admitted personal wrongdoing directly when he was placed under investigation by CPIB later in May 2007. Secondly, Ang did not at any point voluntarily contact CPIB or any other appropriate authority. After his October 2005 disclosures, AEM began a slow process of internal investigation, the details of which it persistently refused to release to Ang. This dragged on until December 2006 with Ang taking no action to contact the authorities. At the end of that period, Ang (when AEM failed to respond to his queries) did not choose to contact any law enforcement agency but instead informed ST Micro, a client of AEM.

60 The significance of these facts was that they did not paint the picture of a genuinely remorseful offender motivated by a desire to come clean and reverse the wrongdoings he had participated in. Rather, Ang seemed mainly motivated by a personal vendetta against Tok which appeared to have arisen in the context of boardroom intrigue at AEM. Any effect his disclosures would have in exposing wrongdoing on his or anyone else's part to appropriate scrutiny struck me as incidental to his plan at best. If Ang's real purpose was to engage the due process of law regarding the illegal acts he would have contacted the relevant authorities at an earlier stage.

61 For these reasons, I did not accord Ang any additional mitigation beyond recognising his high degree of cooperation with CPIB *after* he was placed under investigation as well as his early plea of guilt.

Application of the precedents

62 Turning to the precedents relating to corruption in a private sector commercial setting, I was conscious of Yong CJ's statement in *Soong Hee Sin v Public Prosecutor* [2001] 1 SLR(R) 475 (at [12])

that sentencing involves a "hotchpotch" of varied factors and that the unique combinations of facts in the precedents may therefore not permit straightforward application. However, a broad pattern can be discerned from the existing precedents. Cases involving a small number of charges and/or small amounts of gratification given or received tended to be punished with fines. Examples include *Kwang Boon Keong Peter v Public Prosecutor* [1998] 2 SLR(R) 211 (gratification of $7,000 in three charges), *Yeoh Hock Lam* (gratification of $10,000 in one charge), *Public Prosecutor v Subramaniam s/o Muneyandi* [2003] SGDC 259 (gratification of $50,000 in two charges) and *Public Prosecutor v Fong Kit Sum* [2008] SGDC 58 (gratification of $34,869.21 in four charges, upheld on appeal in Magistrate's Appeal No 128 of 2007/02-03).

63 In contrast, sentences of imprisonment were imposed where (and this is a non-exhaustive list) the amounts of gratification were higher or the offences were committed over a long period of time (as in *Public Prosecutor v Chang Kar Yang* [2006] SGDC 85, notwithstanding the relatively low total gratification of $18,000 in six charges). Custodial sentences have also been imposed based on special policy considerations such as the public service rationale (as in *Lim Teck Chye*, where the total gratification was $6,300 in six charges) or the protection of a certain industry from corruption (see [34] above). In *Lim Teck Chye* it was also made clear at [78] that combinations of aggravating factors could also bring a case above the custody threshold.

64 The District Court in *Yeoh Hock Lam* attempted (at [24]) to suggest a specific amount of gratification (*viz*, $30,000) below which the custody threshold would generally not be breached. On my part, I do not think the factual complexities of the sentencing process permit such a precise figure to be provided. However, I agree that the amount of gratification is an important factor in determining whether the sentence should be custodial or not as it has a correlation with the harm caused by an offence (see [46] above) and the potential need to deter the creation of a corrupt business culture at the highest levels of commerce (see [42] above). On the facts of this case, I found that the size of the bribes and the high position of Ang in AEM's hierarchy justified the imposition of a custodial sentence. For the reasons discussed above, the DJ had erred both on the facts and the applicable legal principles in finding that a non-custodial sentence was appropriate.

65 With this in mind, I compared the present case where the charges proceeded with involved bribes totalling $147,158, with relatively recent precedents involving similar amounts. One such case was *Wong Teck Long* (see [34] above), where the appellant was an assistant vice-president and manager of private banking of a foreign bank who accepted corrupt gratification of about RM300,000 (approximately S$150,000) in exchange for him facilitating the granting of large credit facilities to certain individuals who did not have the necessary net worth. In that case, Yong CJ found (at [33]–[36]) that the high gratification sum, the substantial loss of RM72.5m caused to the bank as a result of the corruption, the element of abuse of trust, and the public interest in protecting the reputation of Singapore's banking industry justified a heavy deterrent sentence of 15 months' imprisonment in addition to a penalty of $150,000 under s 13(1) of the PCA.

66 It was plain that the court in *Wong Teck Long* gave weight to a number of disturbing factors that were not present in this case, such as a massive financial loss caused to the bank employing the offender. In contrast, in this case there is no evidence that the bribes, though of similar size, resulted in similar tangible harm. The strategic importance of Singapore's growing banking and finance industry was also invoked (see *Wong Teck Long* at [36]) to justify additional general deterrence. Although Ang's offences were very serious, there was no evidence that such considerations were relevant in this case. *Wong Teck Long* was therefore distinguishable on its facts.

67 Another relevant precedent was *Public Prosecutor v Tang See Meng* [2001] SGDC 161, the facts and result of which were summarised in *Wong Teck Long* at [37] as follows:

> In *PP v Tang See Meng* [2001] SGDC 161 ("*Tang See Meng*"), the accused, while acting as his employer's contracts manager, corruptly received gratification sums on five occasions totalling $140,000 for recommending an award of a sub-contract. He was convicted of five charges under s 6(*a*) PCA and sentenced to a total of six months' imprisonment, and a penalty of $140,000, in default, four months' imprisonment, was imposed on him. The accused's appeal against the sentence was dismissed in Magistrate's Appeal No 62 of 2001.

68 Another case involving a similar amount of gratification was *Wong Loke Cheng v Public Prosecutor* [2003] 1 SLR(R) 522 ("*Wong Loke Cheng*"). This case was summarised in *Wong Teck Long* at [40] as follows:

> I also considered the case of [*Wong Loke Cheng*]. In that case, the appellant, who was the executive director of his employer company, was convicted of nine charges under s 6(*a*) PCA for corruptly receiving a total of US$90,377 (S$157,255.98) for recommending the charter of a vessel to his employer. The appellant was sentenced to ten months' imprisonment, and a penalty of S$157,255.98, in default, 18 months and six weeks' imprisonment, was imposed on him. His appeal against conviction and sentence was dismissed.

69 Although the facts in *Tang See Meng* and *Wong Loke Cheng* seemed more similar to the present case than those in *Wong Teck Long*, certain differences were nevertheless of great relevance. First, the offenders in those cases did not occupy such senior positions in their respective companies as Ang did in AEM, aggravating Ang's culpability relative to those offenders. Second, the offenders in those cases had claimed trial while Ang had pleaded guilty at an early stage. Third, I found that Ang's high degree of cooperation with CPIB's investigations, while not "whistleblowing", deserved significant recognition; this element was not present in *Tang See Meng* or *Wong Loke Cheng*. Considering all the facts, including the charges taken into consideration, I found that a sentence of six weeks' imprisonment for each of Ang's charges, running consecutively to give a total of 12 weeks' imprisonment, would appropriately reflect the need for general deterrence of such offences while accounting for the balance of mitigating and aggravating factors.

70 There were three main reasons why I imposed consecutive, rather than concurrent, sentences on Ang. First, although s 18 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) did not apply, since Ang was convicted of only two offences, that did not mean that Ang had only *committed* two offences: he had been charged with two other counts of corruption, to be taken into consideration for the purposes of sentencing (see [1] above). It would not, in these circumstances, be an exaggeration to consider Ang a "persistent or habitual offender" (see *ADF* at [146]). Second (but related to the first), it appeared that there was a habit, if not culture, of corrupt business practice being implemented by the top leadership at AEM, and as CEO, Ang had to take his fair share of responsibility for this. Finally, the charges which were proceeded with (*ie*, the Seagate Charge and the Infineon Charge) pertained to distinct offences that were unrelated both in time and in fact (see [6] and [9] above). As such, consecutive custodial sentences were required to give effect to an appropriately punitive and deterrent sanction.

71 On the facts, I felt that the offences were also serious enough to justify fines in addition to custodial sentences. However, I believed that the fines imposed by the DJ were unjustifiably high. The DJ had imposed the maximum fines available under the PCA for each charge. As I stated in *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [87], it is only justified to impose a maximum sentence or near to it is if that particular offence figures among the worst type of cases falling within that prohibition. In relation to the sentence ordered by the DJ, I applied that principle to find that the DJ's sentence would only be justified if Ang's offences were among the worst type of corruption offences *that fell below the custody threshold*. The DJ did not give any such justification

for imposing the maximum fines, nor could I find any. For this reason, I set aside the fines imposed by the DJ and substituted fines of $25,000 for each of the charges against Ang.

Conclusion

72 In the light of the reasons described above, I allowed the Public Prosecutor's appeal. I set aside the sentence of the DJ and substituted a sentence of six weeks' imprisonment and a fine of $25,000 on each charge, each sentence of imprisonment to run consecutively. This amounted to a total sentence of 12 weeks' imprisonment and a fine of $50,000. As Ang had already paid a fine of $200,000 in accordance with his sentence below, I ordered that the balance of $150,000 be refunded to him. By operation of law, Ang was also disqualified from acting as a director from the date of conviction to the end of a period of five years from the date of his release from prison pursuant to s 154(1) read with s 154(4)(*b*) of the Companies Act.

73 I allowed Ang's request that he be allowed to commence his sentence on 1 June 2011, and that he also be permitted to travel on business in the interim. However, I increased his bail amount from $100,000 to $150,000 (the amount to be refunded to him).

74 Finally, it remains for me to express my gratitude to all counsel involved in this appeal for their helpful and comprehensive submissions.