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

[2022] SGHC 52

Magistrate's Appeal No 9839 of 2020/01

Between

Public Prosecutor

… *Appellant*

And

Sindok Trading Pte Ltd (now known as BSS Global Pte Ltd)

… *Respondent*

Magistrate's Appeal No 9840 of 2020/01

Between

Public Prosecutor

… *Appellant*

And

SCN Singapore Pte Ltd

… *Respondent*

Magistrate's Appeal No 9841 of 2020/01

Between

Public Prosecutor

… *Appellant*

And

Laurich International Pte Ltd
(now known as Gunnar
Singapore Pte Ltd)

… *Respondent*

Magistrate's Appeal No 9842 of 2020/01

Between

Public Prosecutor

… *Appellant*

And

Chong Hock Yen

… *Respondent*

Magistrate's Appeal No 9842 of 2020/02

Between

Chong Hock Yen

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Sentencing — Principles — United Nations (Sanctions – Democratic People's Republic of Korea) Regulations 2010]

TABLE OF CONTENTS

Public Prosecutor
v
Sindok Trading Pte Ltd (now known as BSS Global Pte Ltd) and other appeals

[2022] SGHC 52

General Division of the High Court — Magistrate's Appeals Nos 9839, 9840, 9841 and 9842 of 2020/01 and Magistrate's Appeal No 9842 of 2020/02
Aedit Abdullah J
6 August 2021

14 March 2022 Judgment reserved.

Aedit Abdullah J:

1 These are the cross-appeals by the Prosecution (HC/MA 9842/2020/01) and Chong Hock Yen (HC/MA 9842/2020/02) regarding the accused person, and the appeals by the Prosecution against the three errant corporate entities (HC/MA 9839/2020/01, HC/MA 9840/2020/01 and HC/MA 9841/2020/01), in respect of the imprisonment term and fines imposed. For convenience, I shall refer to the offending parties as "the Defence" (which may refer to Chong Hock Yen in some contexts, and the three corporate entities in others).

2 This case concerns the appropriate sentences to be imposed on an individual and the companies he was involved in, regarding offences under reg 5(*a*) read with reg 16(1) of the United Nations (Sanctions — Democratic People's Republic of Korea) Regulations 2010 (GN No S 570/2010) ("UN-

DPRK Regulations"), which are punishable under s 5(1) of the United Nations Act (Cap 339, 2002 Rev Ed) ("UN Act"). These regulations implement the United Nations' ("UN") sanctions against the Democratic People's Republic of Korea ("DPRK"), intending to discourage its nuclear activities.

3 The UN sanctions under consideration arise from the international community's grave concern over the nuclear tests conducted by the DPRK which pose a threat to international peace and security. In SC Res 1718, UN SCOR, 5551st meeting, UN Doc S/Res/1718 (2006) ("Resolution 1718 (2006)"), at para 8(a)(iii), the UN Security Council ("UNSC") called upon all UN member states to, amongst other things, prevent the direct or indirect supply, sale or transfer of luxury goods to the DPRK. In turn, the object of the domestic UN-DPRK Regulations is to give effect to these international obligations imposed by various UNSC resolutions (see reg 2 of the UN-DPRK Regulations).

Factual background

4 Chong Hock Yen ("Chong") had for a number of years traded with the DPRK, and was charged with abetment by engaging in a conspiracy with the three companies and others to supply to the DPRK luxury items such as perfumes, cosmetics, watches and musical instruments.[1] These items are designated luxury items under item (5) in the second row and third column of Part 1 of the Seventh Schedule to the Regulation of Imports and Exports Regulations (1999 Rev Ed) reg 1. Chong was the director and sole decision-

[1] Joint Statement of Facts, paras 13–14 and 25 (Record of Appeal ("ROA"), pp 46–47 and 49).

maker of the three errant corporate entities in question, and held at least 95% shareholding in each entity.[2]

5 The corporate entities involved were SCN Singapore Pte Ltd ("SCN"), Sindok Trading Pte Ltd ("Sindok") (known as BSS Global Pte Ltd since 5 February 2015) and Laurich International Pte Ltd ("Laurich") (known as Gunnar Singapore Pte Ltd since 15 August 2016).[3] These companies were formed by Chong to supply designated luxury goods to various entities in the DPRK in breach of the UN-DPRK Regulations. A number of other persons, including one Lam Hon Lan ("Lam"), working as a secretary of SCN, were also involved in the commission of the offences.[4] All three corporate entities tried to avoid detection throughout the period of offending. The goods were generally transported via shipment through China, with payment being made through front companies incorporated in countries such as Hong Kong, the British Virgin Islands and Anguilla.[5]

6 The charges against the corporate entities were as follows:

(a) SCN supplied luxury goods to one Bugsae Shop in the DPRK, with the value of the goods in the six proceeded charges totalling S$221,005.30. The total value of goods across all the 39 charges was S$492,328.89 and US$29,026.80 (or approximately S$39,340.02). The approximate total gross profit made was S$111,024.27.[6]

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2 Joint Statement of Facts, para 5 (ROA, p 44).

3 Joint Statement of Facts, paras 2–4 (ROA, p 44).

4 Joint Statement of Facts, para 6 (ROA, p 45).

5 Joint Statement of Facts, para 10 (ROA, pp 45–46).

6 Joint Statement of Facts, paras 17–20 (ROA, pp 47–48).

(b) Sindok supplied luxury goods to New Hope Joint Venture Corporation (Pyongyang) in the DPRK, with the value of goods in the one proceeded charge totalling US$10,291.80 (or approximately S$13,948.48). The total value of goods across all three charges was US$20,601.80 (or approximately S$27,921.62). The approximate total gross profit made was S$7,887.74.[7]

(c) Laurich supplied luxury goods to MG Corporation in the DPRK on one occasion, with the value of goods totalling US$12,000.00 (or approximately S$16,263.60). The approximate gross profit made was S$3,204.95.[8]

7 The total value of goods supplied for all 43 charges was S$575,854.13,[9] giving a total gross profit of S$122,116.96.[10]

8 Chong faced 43 charges against him in relation to the abetment by conspiracy with SCN and others to breach reg 5(*a*) read with reg 16(1) of the UN-DPRK Regulations, which is punishable under s 5(1) of the UN Act read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed).[11] The 43 charges raised against Chong correspond to the 39 charges against SCN, the three charges against Sindok and the one charge against Laurich.

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7 Joint Statement of Facts, paras 21–24 (ROA, p 48).

8 Joint Statement of Facts, paras 25–26 (ROA, p 49).

9 Grounds of Decision, [14] (ROA, p 312).

10 Joint Statement of Facts, para 16 (ROA, p 47).

11 Joint Statement of Facts, paras 14–15 (ROA, pp 46–47).

9 As it was, Chong pleaded guilty to eight charges, while SCN, Sindok and Laurich pleaded guilty to six, one and one charge respectively, with the other charges taken into consideration.[12]

10 The period of offending for the various charges was from 27 December 2010 to 18 November 2016.[13] Some of these offences were committed after the coming into force of amendments to s 5(1) of the UN Act on 10 March 2014 which enhanced the maximum available punishment ("2014 amendments"). I shall refer to the offences committed before the 2014 amendments as "pre-amendment offences" and those offences committed after the coming into force of the 2014 amendments as "post-amendment offences".

11 Prior to the 2014 amendments, s 5(1) of the UN Act provided that every person who committed any offence against any regulations made under the UN Act would "be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 5 years or to both." No distinction was made between individuals and corporate entities with regard to the maximum fine amount.

12 For convenience, I set out the applicable post-2014 provision under s 5(1) of the UN Act:

> **Liability for breach of regulations**
>
> **5.**—(1) Every person who commits, or attempts to commit, or does any act with intent to commit, or counsels, procures, aids, abets, or incites any other person to commit, or conspires with any other person (whether in Singapore or elsewhere) to commit any offence against any regulations made under this Act shall be liable on conviction —

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12 Petition of Appeal by the Prosecution, para 2 (ROA, p 177).

13 Schedule of offences for Chong, (ROA, pp 19–27).

> (*a*) in the case of an individual, to a fine not exceeding $500,000 or to imprisonment for a term not exceeding 10 years or to both; or
>
> (*b*) in any other case, to a fine not exceeding $1 million.

In summary, through the 2014 amendments, the maximum fine for individuals was increased five-fold ($100,000 to $500,000) and the maximum imprisonment term was doubled (five years to ten years). On the other hand, the maximum fine for corporate entities was increased ten-fold ($100,000 to $1,000,000).

Summary of the decision below

13 The District Judge's ("DJ") full grounds of decision are set out in *Public Prosecutor v Chong Hock Yen and others* [2021] SGDC 13. The DJ was of the view that general deterrence should be the main sentencing principle for offences of this nature.[14] Singapore had enacted the UN-DPRK Regulations to give effect to the sanctions imposed against the DPRK, in line with its international law obligations. Thus, by committing the offences, Chong and the other three companies (SCN, Sindok and Laurich) had undermined the effectiveness of the UN sanctions regime.[15]

14 Beginning with the sentence imposed against Chong, the DJ took the view that the level of harm caused by the offences committed by Chong was "slight" or "low". There was no evidence to suggest that the goods supplied or the proceeds of sale had facilitated the DPRK's nuclear weapons programme.[16]

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14 Grounds of Decision, [38] (ROA, p 327).

15 Grounds of Decision, [37] (ROA, p 327).

16 Grounds of Decision, [40] (ROA, p 328).

15 However, the DJ noted that the presence of aggravating factors and the medium level of Chong's culpability meant that a custodial sentence should be imposed, rather than just a high fine.[17] This was for the following reasons:

(a) Chong's violations had a detrimental effect on Singapore's standing as a UN member and its international reputation.[18]

(b) There was a long duration of offending over a six-year period and a substantial volume of trade in excess of $575,000.[19]

(c) Chong had established companies to trade with the DPRK and did not cease trading activities after the sanctions were effected, thus demonstrating that he was indifferent to Singapore's international obligations and was motivated by personal gain.[20]

(d) There was a certain level of sophistication and planning to avoid legal scrutiny as Chong took measures such as supplying the prohibited goods indirectly via China and receiving payments from the DPRK entities through front companies incorporated elsewhere.[21]

16 The custodial threshold was crossed for Chong, and the DJ was minded to find that the relevant mitigating factors relating to Chong were of insufficient weight to displace the strong public interest in requiring the imposition of a custodial sentence.[22]

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17 Grounds of Decision, [41] (ROA, p 328).

18 Grounds of Decision, [42]–[45] (ROA, pp 328–330).

19 Grounds of Decision, [46]–[47] (ROA, p 330).

20 Grounds of Decision, [48]–[50] (ROA, pp 330–331).

21 Grounds of Decision, [51]–[53] (ROA, pp 331–332).

22 Grounds of Decision, [54] (ROA, p 332–333).

17 The DJ imposed the following sentences on Chong:[23]

(a) For seven of the charges (DAC 934399/2018, DAC 934401/2018, DAC 934402/2018, DAC 934425/2018, DAC 934426/2018, DAC 934427/2018 and DAC 934433/2018): one week's imprisonment.

(b) For charge DAC 934423/2018: two weeks' imprisonment.

There was a mix of pre-amendment offences and post-amendment offences in the eight proceeded charges. Of the proceeded charges, DAC 934399/2018, DAC 934401/2018 and DAC 934402/2018 were pre-amendment offences, while the remaining five charges were post-amendment offences. The sentences in DAC 934401/2018 and DAC 934423/2018 were made to run consecutively for a total of three weeks' imprisonment in total,[24] while the remaining sentences were to run concurrently.

18 Turning to the punishments imposed on the three companies (SCN, Sindok and Laurich), the DJ first addressed the level of harm caused and the culpability attributable to the companies. The DJ observed that while SCN's level of culpability was the same level as Chong (medium level), the same could not be said for Sindok and Laurich as those two companies had lower trading volume and the duration of offending was shorter, and hence for those two companies the culpability level was low.[25]

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23 Grounds of Decision, [9] (ROA, p 309).

24 Grounds of Decision, [67] (ROA, p 340).

25 Grounds of Decision, [69]–[70] (ROA, p 341).

19 Regarding the sentencing position for the post-amendment offences for SCN and Laurich, the DJ expressed concerns over the Prosecution's proposal that the fines should be automatically increased ten-fold due to the 2014 amendments, and their comparison with fines imposed in a previous case.[26] The DJ also indicated concern over the Prosecution's proposed sentencing position for Sindok as the proposed fine was less than the gross profit earned, and the Prosecution admitted that this was at odds with their submission that the fines imposed should incorporate a disgorgement element.[27]

20 The Prosecution then proceeded to review their overall sentencing approach in relation to SCN, Sindok and Laurich.[28] Further submissions were then heard. The DJ rejected the Prosecution's revised proposed approach to increase the fines for post-amendment offences five-fold (instead of ten-fold) and to bifurcate the fines by adding an additional quantum to disgorge the gross profits earned.[29]

21 For the companies, the fines imposed were as follows:[30]

(a) SCN: A fine of $15,000 each for the two pre-amendment offences (DSC 900745/2018 and DSC 900747/2018), a fine of $20,000 each for three of the post-amendment offences (DSC 900767/2018, DSC 900768/2018 and DSC 900769/2018) and a fine of $30,000 for the last post-amendment offence (DSC 900765/2018). This gives a total fine of $120,000.

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26 Grounds of Decision, [75] (ROA, p 344).

27 Grounds of Decision, [76] (ROA, p 345).

28 Grounds of Decision, [77] (ROA, p 345).

29 Grounds of Decision, [85] (ROA, p 348).

30 Grounds of Decision, [9] (ROA, pp 309–310).

(b) Sindok: For the single pre-amendment offence (DSC 900739/2018), a fine of $10,000.

(c) Laurich: For the single post-amendment offence (DSC 900740/2018), a fine of $10,000.

Summary of the Prosecution's case

22 The Prosecution appeals against the length of the imprisonment term imposed on Chong, arguing that the length imposed by the DJ does not adequately account for the need for strong deterrence, the high culpability and the aggravating factors present, including: the effect on Singapore's international standing, the long duration of offending and substantial volume of trade, premeditation, the high level of sophistication and planning involved, and the profit motivation.[31] The applicable mitigating factors, on the other hand, were fully considered below.[32] The DJ also erred in not imposing enhanced sentences on Chong in respect of offences occurring post-amendment, which actually caused greater harm.[33] The DJ's reasoning on this score was also at odds with her approach to the companies.[34] The DJ failed to give sufficient weight to the aggravating factor regarding the of abuse of authority.[35] Lastly, the DJ failed to appreciate the distinction between the present case and an earlier District

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31 Prosecution's submissions dated 6 August 2021 ("Prosecution's submissions"), paras 12–27.

32 Prosecution's submissions, paras 28–34.

33 Prosecution's submissions, paras 35–47.

34 Prosecution's submissions, paras 48–51.

35 Prosecution's submissions, paras 52–56.

Court decision.[36] A longer sentence of six weeks' imprisonment (at least) is sought.[37]

23 The sentences imposed on the three companies were also manifestly inadequate, as there was insufficient weight placed on the various aggravating factors, and too much weight was given to the absence of antecedents and the ceasing of operations.[38] Sentencing precedents indicated that higher sentences should have been imposed.[39] The DJ also erred in not adopting a bifurcated approach to the fines, covering both punishment and disgorgement of profits.[40] The global fines imposed should therefore be increased as follows: $330,000 for SCN, $18,000 for Sindok and $40,000 for Laurich.[41]

24 In oral arguments, the Prosecution informed the court that while the first instance decision in *Public Prosecutor v Ng Kheng Wah and others* [2019] SGDC 249 ("*Ng Kheng Wah*") attempted to lay down benchmark sentences, they did not think it was necessary to do so here.

Summary of the Defence's case

25 In relation to Chong, the Defence argues that the sentence imposed on Chong was manifestly excessive because the threshold for the imposition of a custodial sentence was not crossed.[42] The DJ erred in concluding that the impact

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36 Prosecution's submissions, paras 57–68.

37 Prosecution's submissions, para 5.

38 Prosecution's submissions, paras 75–85.

39 Prosecution's submissions, paras 86–88.

40 Prosecution's submissions, paras 89–108.

41 Prosecution's submissions, para 5.

42 Appellant's submissions filed in HC/MA 9842/2020/02 dated 27 July 2021 ("Appellant's submissions"), para 7.

on Singapore's reputation and standing was such as to require the imposition of a custodial sentence.[43] The present case only involved the supply of consumer goods, and nothing showed that there was any facilitation of the DPRK's nuclear programme.[44] Further, the duration of offending and volume of trade showed that Chong had only carried out fairly small transactions on a yearly basis.[45] Chong was also not indifferent to the controls which the international community had imposed on the DPRK.[46] The DJ also failed to adequately consider the relevant mitigating factors such as Chong's co-operation with authorities.[47] Given that custodial sentences are not mandatory, and that the present case involved low culpability, an appropriate fine should have been imposed on Chong instead of a custodial sentence.

26 As for the three companies, the Defence argues that the DJ gave sufficient weight to the aggravating factors identified by the Prosecution, determined correctly that there should not be any enhancement of sentences for post-amendment offences, correctly declined to apply a bifurcated approach to the determination of the fines, correctly found that the circumstances in *Ng Kheng Wah* were significantly more serious; and correctly took into account the fact that the companies had taken steps to avoid further violations by ceasing its operations and trading with the DPRK.[48] Hence, the fines imposed against the companies by the DJ should be maintained.

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43 Appellant's submissions, paras 17–27.

44 Appellant's submissions, paras 18–19.

45 Appellant's submissions, paras 28–33.

46 Appellant's submissions, paras 34–38.

47 Appellant's submissions, paras 44–55.

48 Respondent's submissions filed in HC/MA 9839/2020/01–9842/2020/01 dated 27 July 2021 ("Respondent's submissions"), para 10.

The decision

27 I am persuaded that the sentences imposed below were manifestly inadequate and that the sentences imposed should be increased, particularly to protect and further the interests to be safeguarded by the legislation, through imposing appropriate retribution, as well as providing sufficient deterrence against similar or worse acts by others.

Sentencing benchmarks

28 I do not in this case lay down a sentencing benchmark. The Prosecution does not seek the laying down of a sentencing benchmark, submitting that it is not necessary to do so, given the relative scarcity of cases.

29 In *Ng Kheng Wah*, previously, an attempt was made to lay out a framework for sentences in this area by the District Court. While the effort is appreciated, such benchmarks should generally be left to the appellate court. Furthermore, sentencing benchmarks should only be imposed when there are sufficient cases, and should not be imposed *a priori* generally. In addition, there was extensive consideration of foreign authorities by the District Court in *Ng Kheng Wah*, such as those from the United States. As submitted by the Defence,[49] sufficient care should be exercised in the usage of such foreign authorities for purposes of determining what is an appropriate sentencing benchmark in Singapore, as noted in *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [15]–[16].

30 It may be permissible for a sentencing court to have regard to relevant decisions of foreign courts to discern sentencing principles where there are no

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[49] Appellant's submissions, para 28.

local sentencing precedents and the legislative provisions in the foreign precedents are broadly similar as they were all enacted to give effect to similar obligations arising under international treaties or conventions: *Chan Chun Hong v Public Prosecutor* [2016] 3 SLR 465 at [88]. However, the reference to foreign sentences must always take into account both domestic and foreign factors, including proportionality and coherence within each jurisdiction, and Singapore's unique public policy. In the present case, given the guidance from the legislative speeches, and the application of general sentencing principles, I do not think it is necessary to draw from foreign decisions.

31 For the moment, therefore, first instance courts dealing with offences under the UN-DPRK Regulations should impose sentences applying consideration of the various sentencing factors that may be material, taking guidance from this case and other Magistrate's Appeal decisions. While there should be some degree of striving for consistency as between cases decided at first instance, sentencing courts should focus primarily on the specific factors at play before them.

Sentencing approach

32 In calibrating the sentence here, the general sentencing approach is applicable, that is, the court will consider the harm caused by the offence, the responsibility or culpability of the offender, as well as the existence of any other factors, going to mitigation or aggravation including: the number of charges, the effect of the plea of guilt, and any reparation, restitution, or other evidence of remorse (see, *eg, Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 at [36]–[37]). The distinction between culpability and harm is not watertight, and there may be some factors that straddle the boundary between the two, or which

reasonable persons might categorise differently. The important thing is to ensure proper consideration of these factors and to avoid double counting their effects.

Sentence imposed on Chong

Harm

33 On the specific facts of this case, what the Prosecution posits as harm includes the adverse impact on Singapore's reputation and standing. I find that the harm was substantial.

34 The offence that is the subject of the charges covers harm in a number of ways. The breach of the UN-DPRK Regulations may in some instances lead directly to increasing the egregiousness of the very behaviour that is to be discouraged by the sanctions. Thus, where sanctions are imposed to prevent the acquisition of arms or harmful technology, providing the very arms or technology in question would call for heavy punishment. If the offence involves some other prohibited act that is not the direct target of the sanctions, while harm could arise, the calibration of the punishment will need to be more nuanced and there must be greater care exercised in ensuring proportionality. In addition to the direct consequences of the contravention, other types of harm follow, including the detrimental effect on the international reputation and standing of the country in which the offences were committed. Harm would also be increased by various factors, common to many offences, including the number of instances, the duration involved, and the size or scope. Some of these factors could also be considered as going to culpability, and care must be had to ensure that there is no double counting.

International obligations enacted under national law

35 An impact statement was prepared by the Singapore Ministry of Foreign Affairs ("MFA") which highlighted the impact of the violations by Chong and the three companies on Singapore's international reputation and standing.[50] The Prosecution points to this impact statement from the MFA, noting that the violations took place during a period where the DPRK conducted an increasing number of missile and nuclear tests.[51] Singapore had failed to prevent Chong and the three companies from flouting the sanctions despite its commitment to uphold them. There was also increased scrutiny and criticism from the UNSC Panel of Experts in findings published on the UNSC website in 2018 which was publicly available. The international public attention, in turn, cast a negative light on the integrity and reputation of Singapore and this would affect our economic reputation and competitiveness.[52]

36 The Defence refutes the position of the Prosecution, asserting that the statute allows for a fine to be imposed. The Defence argues that the harm to international standing is not established to the degree asserted by the Prosecution. The DJ already gave the harm to international standing due consideration. In fact, the DJ erred in finding that the effect on Singapore's standing was so detrimental as to require the imposition of a custodial sentence.[53] Here, the offences only involved the supply of general consumer goods, not connected at all with weapons or nuclear capabilities, which is at the lowest end of the culpability spectrum.[54] Every breach or non-compliance of the

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50 Joint Statement of Facts, para 28 (ROA, p 49).

51 Prosecution's submissions, para 14.

52 Prosecution's submissions, para 16.

53 Appellant's submissions, para 27.

54 Appellant's submissions, paras 18–19.

UN-DPRK Regulations would have some impact on Singapore's standing, but a custodial sentence is not called for by the legislation in every case.[55]

37 In oral arguments before me, the Defence took issue with whether the extent of harm to reputation was quite as serious as what the Prosecution submitted. While the MFA statement provided that Singaporean individuals and entities became the subject of sanctions by the United States, there was no evidence that the designation of individuals and entities by the United States as being subject to sanctions arose because of the violations from the present case.[56] Neither was there any increased scrutiny on Singaporean entities by the international community as a result of the offences committed by Chong and the three companies. What the MFA indicated was that there would be an increased risk for Singapore's financial and economic sectors.[57] However, any breach would have such an impact. There was no specific evidence that Singapore's reputation was damaged in this case. The Defence argues that essentially, the Prosecution is asking for Chong to be made a scapegoat. The DJ erred in concluding that the MFA impact statement called for the imposition of a custodial sentence here.

The importance of this factor

38 I am of the view that what has been invoked by the Prosecution as effect on reputation and standing is a relevant consideration as to harm. Where the Singapore Legislature had specifically enacted laws implementing or supporting international efforts, a contravention or undermining of those efforts would generally involve substantial harm. This does not, I must emphasise,

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55 Appellant's submissions, paras 22–23.

56 Appellant's submissions, para 24.

57 Appellant's submissions, para 25.

involve a general obligation importing all supposed international norms, rules or laws. What is important is our domestic Legislature's implementation of national law that protects or furthers such international obligations. Without such enactment, there is simply nothing for the courts to recognise or effect (see *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at [45]).

Effect on reputation and standing

39 The UN–DPRK Regulations are Singapore's domestic implementation of the UN sanctions imposed on the DPRK. The international community intended these sanctions to curb the DPRK's growing nuclear activities which endangered regional stability. The sanctions would only be effective if UN member states complied by restricting trade to the DPRK, thereby exerting pressure on the DPRK to come to the negotiating table to cease their nuclear activities. The trade-related measures adopted by the UNSC in Resolution 1718 (2006) and SC Res 1874, UN SCOR, 6141st meeting, UN Doc S/Res/1874 (2009) ("Resolution 1874 (2009)") are aimed at convincing the DPRK to comply with its international obligations and return to talks concerning nuclear disarmament, and at inhibiting the DRPK's ability to acquire technology and financial resources to contribute to its nuclear and missile programmes (see *Report of the Panel of Experts established pursuant to resolution 1874 (2009)* (5 November 2010) (S/2010/571) at para 18).

40 The starting point is that violation of a UN measure enacted into domestic law will be taken to affect our international reputation. Certainly, there may be occasions where an international reprimand or warning may be issued specifically against Singapore; where that happens, the scale of harm is increased substantially. But a base level harm would be taken to follow from any breach of an international obligation unless the harm is perhaps *de minimis*.

On the face of it alone, the breach of an international obligation creates the potential for harm affecting our relations with other nations and with international organisations. This would undermine our national interests and participation in the international sphere. Albeit in a different context (regarding the fight against corruption under the United Nations Convention Against Corruption (31 October 2003), 2349 UNTS 41), as observed in *Public Prosecutor v Tan Kok Ming Michael and other appeals* [2019] 5 SLR 926 at [82] (citing Canadian jurisprudence), the violation of international obligations could prejudice a State's efforts to foster effective commercial relations with other countries.

41 Compliance with UNSC resolutions is amongst one of the most substantial international obligations that exist as they concern threats to international peace and security (see UN Charter (26 June 1945) ("UN Charter") art 39). Singapore must comply with these resolutions as a UN member (see UN Charter art 41), and any non-compliance can have severe repercussions as noted during the second reading of the United Nations Bill (Bill No 42/2001) (*Singapore Parliamentary Debates, Official Report* (15 October 2001) vol 73 at col 2436 (Professor S Jayakumar, Minister for Law and Minister for Foreign Affairs):

> Singapore is a member of the United Nations. Like all other members of the United Nations, we are legally bound by the UN Charter to implement mandatory resolutions of the UN Security Council. A failure to give effect to the measures mandated by the Security Council would be a breach of our international obligations for which Singapore may be subject to censure and sanctions by the Security Council.

42 Judicial notice is taken of the impact of scrutiny, especially on our position as an international trade and financial centre. We must always be especially cognizant of the attendant ramifications from breaches of

international obligations on Singapore's hard-earned reputation as a global financial hub (see, *eg*, *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 at [56]–[57]). Concerns about our compliance may lead to various possible consequences, including the stifling of trade, business or investment, whether through discouraging others from dealing with us, or through some form of international disapproval, or even sanctions. While the harm should not be overstated, where there is evidence of international disapproval, the harm would have to be assessed as significant. Criticism through a resolution passed at an international meeting or criticism by political leaders would perhaps be close to the highest level of condemnation, causing great harm. Comments made by the UNSC Panel of Experts would not be at those levels but would be substantive enough.

43 In the present case, the adverse impact is substantiated by the MFA impact statement, referring to the scrutiny by and findings of the UNSC Panel of Experts, and the questioning of our commitment to the upholding of obligations under the UNSC resolutions.[58] There is also the possible imposition of foreign sanctions on local financial institutions which are triggered by the increased scrutiny caused by the breach of UN sanctions, and this would negatively impact Singapore's economic competitiveness.[59]

44 It is true that luxury goods do not create a threat in themselves. But they remain prohibited, and contravention of such prohibition itself causes harm to Singapore. Furthermore, luxury goods, not being necessities, probably provide succour and motivation for the continued defiance or contravention of UN sanctions by those in positions of influence or power within the country. A

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58 Joint Statement of Facts, Annex A, paras 6–8 (ROA, pp 53–54).

59 Joint Statement of Facts, Annex A, paras 9 (ROA, p 54).

distinction is made between goods intended for the general population and premium goods that are manufactured for a select group (see *Report of the Panel of Experts established pursuant to resolution 1874 (2009)* (5 November 2010) (S/2010/571) at para 75B).

45 What can also be inferred is that if the offences were committed (at least partly) during a time of heightened tension, then this would have created further embarrassment for Singapore and damage to its reputation. Commission of the offences during such a period would have created the reasonable perception that Singapore either did not care about, or was not capable of, enforcing the sanctions as required under international law; in either case, the perception could be one of dereliction of obligations, damaging Singapore's reputation.

46 The Defence argues that there is a lack of evidence of damage to reputation. However, the harm is readily inferable from contravention and non-compliance with such sanctions when these are mirrored in national law. What has been produced by the Prosecution is sufficient to show the detriment suffered.

47 I accept the Prosecution's arguments and reject those of the Defence. There was substantial harm through the impact on our international standing and reputation, especially with the breach being non-compliance with UNSC resolutions which would have called for compliance from all nations. A 2018 report by the UNSC Panel of Experts which detailed its investigative efforts makes explicit references to one of the offending companies in question, SCN, at various junctures, *eg*, "Between November 2011 and May 2014, transactions valued at more than $5 million were made through that account to … as well as to another Singaporean company, SCN Singapore Pte Ltd for payment for goods sold at the OCN Pyongyang Bugsae Shop …" (see *Report of the Panel of*

Experts established pursuant to resolution 1874 (2009) (5 March 2018) (S/2018/171) at para 183). These findings were reported to all UN members and were also publicly available on the UNSC website, which led to backlash and a negative light being cast onto Singapore as they were widely reported in the international media.

48 In general, aside from *de minimis* or brief non-compliance, a fine would not be appropriate. The cases cited by the Defence as mandating a full use of the available spectrum of punishment in general, such as *Ong Chee Eng v Public Prosecutor* [2012] 3 SLR 776 at [23],[60] were really emphasising that regard must be had to the available range. But certain common factual scenarios may yet warrant a starting sentence not at the lowest or towards the lower end of the spectrum. These cases were really concerned with proportionality in sentencing. They do not stand for any proposition that called for the imposition of a non-custodial sentence on Chong here.

Culpability

49 Specific factors here going to culpability are duration, the level of premeditation, sophistication and planning, as well as the amount of profit obtained. A blatant disregard for sanctions also points towards substantial culpability. The court should also be very sceptical of any claimed ignorance of the imposition of sanctions. Those in trade and business cannot claim ignorance of sanctions, particularly by international bodies such as the UN. They are expected to know, at least in general terms, of the conditions of the world and matters affecting the countries they do business with. Anyone truly ignorant of

[60] Appellant's submissions, para 20.

world events would presumably have come a cropper in business long before they had any opportunity to breach sanctions.

50 I find that the level of culpability was at least at the mid-level, meaning that it was not negligible, but neither was it at the higher end of the range.

Duration

51 I find that the duration of the period over which the offences were committed increased the culpability of Chong, and his culpability was at the medium level.

(1) The parties' arguments

52 The Prosecution argues that Chong had committed his contraventions over a prolonged period of almost six years, over which there were 43 instances of offending, with three resolutions passed by the UNSC in relation to luxury goods bans and there was extensive publicity about the DPRK's missile and nuclear tests.[61] His culpability was correctly determined by the DJ to be at the medium level.

53 The Defence argues that *Ng Kheng Wah* is of limited assistance, as it considered cases in other jurisdictions.[62] What happened here was that the transactions were relatively small on a yearly basis when taken in their entirety.[63] The DJ erred in finding that the duration was long with a substantial volume of trade. Furthermore, there would be double counting if one factored in the duration of offending and the volume of trade (as distinct factors) when

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61 Prosecution's Submissions, paras 20–21.

62 Appellant's submissions, para 28.

63 Appellant's submissions, paras 29–31.

considering the multiple charges that were proceeded with, particularly given that the harm caused was slight and culpability was only at the medium level.[64] A custodial sentence is not supported on the basis of these arguments.

54 The Defence further argues that Chong's trading through the companies occurred before the UNSC resolutions were passed. Though he did not cease his activities, there was no expansion of the business as opposed to what was concluded by the DJ.[65] There was no indifference on the part of Chong to the controls imposed by the international community. The DJ also erred in finding that Chong was aware of the risks and implications of trading with the DPRK, by suggesting that Chong wanted to run a low-key operation to avoid detection. The evidence relied upon by the DJ did not in fact support her conclusion: she relied on a newspaper report which suggested the contrary, and the inference drawn from the failure to list the companies' names on the floor guides and outside the unit was speculative.[66]

(2) Assessment of duration

55 The trading occurred for almost six years, from December 2010 to November 2016.[67] This is a substantial period of time. Culpability is increased by a lengthy duration simply because the criminal conduct is prolonged and persistent. In contrast, a person engaged in a one-off criminal act, or one that only continues for a relatively short period, would have displayed less culpability and would be less criminally responsible. In addition, the lengthy duration also potentially prolongs the harm caused by the act, though in this

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64 Appellant's submissions, para 32.

65 Appellant's submissions, paras 35–36.

66 Appellant's submissions, paras 41–42.

67 Joint Statement of Facts, para 9 (ROA, p 45).

case, I would have taken the scale of criminal conduct rather than the number of charges against Chong.

56 The fact that there were multiple charges is a separate consideration from the duration. They affect different sentencing interests. Multiple charges generally show increased criminal culpability through the number of contraventions. The duration of time over which offences are committed may be related, but it highlights a different aspect of culpability: a single contravention spread over a long period of time, may indeed show greater criminal behaviour than multiple contraventions over a short period. Much depends on the nature of the criminal act, and the context in which it exists. But it is clear that there will be no double counting here.

Indifference to the controls

57 The Defence argues that the DJ erred in finding that Chong had continued to expand his trading activities even after the trade became illegal.[68] The Prosecution maintains that Chong expanded his trading activities with the DPRK because there remained profits to be made.[69]

58 I note that the value of trade had fluctuated over the years and there may not necessarily have been an expansion. However, while Chong may not have expanded his trading activities, they were maintained at a similarly high volume of trade even after the coming into force of the 2014 amendments. This demonstrates his blatant indifference to the sanctions imposed.

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68 Appellant's submissions, para 36.

69 Prosecution's Submissions, para 27.

Premeditation, sophistication, and planning

59 The Prosecution argues that Chong, having supplied the goods on 43 occasions spread over six years, had committed the offences deliberately and repeatedly. This shows, the Prosecution contends, premeditation. It is also argued that Chong had demonstrated a high degree of sophistication and planning to avoid legal scrutiny, by transporting the goods through circuitous routes and having payments sent through front companies incorporated in Hong Kong, the British Virgin Islands and Anguilla. Chong also kept a low profile to avoid detection by not having the companies' names on floor directories, as found by a journalist who had visited the registered addresses.[70]

60 The Defence argues that the DJ sufficiently considered the premeditation and planning.

61 I am not sure how premeditation is to play a role in cases of the type before me. Premeditation should generally be considered in contradistinction with spontaneous or spur of the moment acts, which are generally regarded as carrying less blameworthiness, in recognition of possible momentary foolishness or impetuosity, particularly of those who are regarded as being immature. A person could spontaneously commit an act of violence, and perhaps some property offences such as shop theft. But one does not spontaneously supply goods to a foreign country. Thus, the real complaint concerns the planning, organisation and sophistication involved in the commission of the offences. Generally, the greater the degree of planning involved then, correspondingly, the greater the culpability of the offender (see

[70] Prosecution's Submissions, paras 22–26.

Mehra Radhika v Public Prosecutor [2015] 1 SLR 96 at [41]). The same can be said for the presence of organisation and sophistication.

62 I accept the Prosecution's submissions that the offences were committed with planning as Chong routed the goods through circuitous routes, with payments being made through front companies in various offshore jurisdictions. Though, given the widespread use of offshore companies to shield responsibility and liability in a range of contexts, I do not think that it involved so much sophistication. While such planning merits a heavier sentence because of the greater criminality involved as opposed to a spontaneous act, overall, the uplift here would be relatively muted.

63 I do not accept, however, that the fact that the company names were not listed on the directory of the building that they were in is indicative of any planning or subterfuge. I accept the Defence's arguments on this score, and this factor should not have been relied upon by the DJ. Newspaper reports should not be used to determine such issues. Furthermore, if the Prosecution wishes to rely on this, it should tie such omission in some way to the proscribed activity; otherwise, it would be entirely speculative. Omission to list the companies' names outside the unit could be for a number of reasons, some of which may be neutral or innocent. It may not even have been at the direction of Chong.

Profit motivation

64 Chong did profit substantially from his activities, indicating that his culpability was not low.

65 The Prosecution argues that a total sum of $122,116.96 was made through trading via the three companies, which is, it says, a lucrative profit.[71] The Defence argues that taken in context, Chong carried out small transactions on a yearly basis.[72]

66 I am satisfied that the profit obtained is a relevant consideration in determining the culpability of Chong.

67 The motivation to earn profits from contravention of the law must be deterred through the imposition of an appropriately heavy sentence. The promise of financial rewards must be outweighed in the minds of possible offenders by the threat of punishment. In some cases, appropriately calibrated fines can achieve this purpose by disgorging any profit (see, *eg*, *Public Prosecutor v Su Jiqing Joel* [2021] 3 SLR 1232 ("*Su Jiqing Joel*")). However, where the criminal conduct involves a substantial contravention of a law protecting our national interests, I am of the view that a fine would not be a sufficient deterrent. In addition, the punitive or retributive aspect would also require a sufficiently heavy sentence, in proportion to the scale and effect of the contravention.

Aggravating factors

68 The primary aggravating factor possibly at play in this case is the abuse of authority by Chong. The Prosecution argues that there was an abuse of authority in involving a secretary of SCN, Lam, in the commission of offences.

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71 Prosecution's Submissions, para 27.

72 Appellant's submissions, para 30.

It is said that the secretary was pressured to act on Chong's instructions as he was, in the words of the Prosecution, the paymaster.[73]

69 The Defence argues that the secretary was charged, convicted, and sentenced for distinct offences that she committed. Thus, Lam's involvement should be considered as a separate matter and not as an aggravating factor. There is no evidence that Chong abetted by conspiracy or directed Lam not to inform anyone about the violations, or otherwise coerced her.[74] The Defence contends that this factor was adequately considered by the DJ, who noted this fact in the decision below.[75] In any event, the charges against Lam are separate and distinct, relating to her failure to inform the police of the authorised transactions with the DPRK.[76]

70 I am not persuaded that this amounted to an abuse of position. Generally, such abuse occurs where one is in a position of responsibility or is trusted (see, *eg*, *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [44(b)]). I do not think being in an employment relationship necessarily creates that kind of vulnerability in relation to prohibited commercial activities.

71 Really, this was a form of superior command. A person who is in a position of authority over someone would have greater culpability if he involved that person in his criminal activity. This flows simply from the involvement of others which would have perpetuated the crime and expanded the criminal enterprise. The fact that the secretary was dealt with separately does not eliminate its effect on the culpability of Chong. The secretary did indeed commit

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73 Prosecution's Submissions, para 56.

74 Respondent's submissions, para 17.

75 Respondent's submissions, para 15.

76 Respondent's submissions, para 16.

a separate offence and should be dealt with for that. But the fact of the matter is, Chong brought her into this, even if it fell short of abetment or any other accessory liability. However, the uplift effect would, to my mind, be relatively small.

Mitigating factors

72 The primary mitigating factor in favour of Chong is his plea of guilt. The Defence also raises the argument that the "clang of the prison gates" principle should apply here, and that Chong's co-operation with authorities must be considered.

Remorse and a plea of guilt

73 The Defence argues that there was genuine remorse was shown by Chong in his early plea of guilt which warrants a discount in the sentence.[77] Chong provided information which was the basis of the facts admitted to at the hearing and saved the time and resources of both the Prosecution and the District Court.[78] I am satisfied, though, that the DJ fully took into account the possible mitigatory effect of remorse and the plea of guilt here. In imposing a custodial sentence, the DJ simply found that the mitigatory effect of the plea of guilt (together with the other factors) was not so weighty as to displace the need for a custodial sentence.[79]

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77 Appellant's submissions, para 52.

78 Appellant's submissions, para 54.

79 Grounds of Decision, [54] (ROA, pp 332–333).

The clang of the prison gates

74 The Defence points to the fact that Chong is a first-time offender with an unblemished record and is of good character. As a first-time offender, the stressful effect of the criminal proceedings on Chong has had a "powerful impact" on him, given the amount of publicity generated in the local newspapers and social media. There has also been great personal pain and hardship suffered as Chong's wife and daughter were left behind in Malaysia for an extended period as he attended the proceedings in Singapore.[80] This constitutes sufficient punishment and there is no need for specific deterrence.

75 The Prosecution submits that "the clang of the prison gates" argument does not help Chong in any way. The absence of prior convictions does not show reduced responsibility, nor does it attenuate the harm caused by the offence. The DJ was well justified to decline to consider Chong a first-time offender given the number of offences committed and the duration of offending. Chong has a clean record only because he was not caught earlier for his offences.[81]

76 The "clang of the prison gates" principle does not operate on the basis of the accused person's high standing in society or his eminence. Rather, the principle is understood as a recognition of the mitigatory effect of a long clean record and of the criminal behaviour thus being out of character: *Leong Sow Hon v Public Prosecutor* [2021] 3 SLR 1199 ("*Leong Sow Hon*") at [69]. I point this out as the Defence's submissions seem to be somewhat misguided when they cite the publicity that the case has generated and the impact on Chong. The

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80 Appellant's submissions, paras 48–50.

81 Prosecution's submissions, para 31.

shame experienced by Chong is not relevant under this principle. Neither are his personal struggles.

77 I can only reiterate what I discussed in *Leong Sow Hon* at [70], that while a clean record and previous good conduct may reduce or obviate the need for specific deterrence as they may show that the offences were committed out of character, they do not necessarily reduce the need for retribution as a sentencing consideration. Other considerations going towards the need for general deterrence may also need to be given greater weight, especially in the context of violations of UN sanctions where a strong message must be sent.

78 Further, I doubt whether Chong can be considered a first-time offender since he has committed offences over a protracted period of almost six years and he has 43 charges hanging over him (see *Lim Bee Ngan Karen v Public Prosecutor* [2015] 4 SLR 1120 at [69]). It is merely good fortune that he was not caught earlier. Hence, this does not displace the need for a custodial sentence.

Co-operation

79 The Defence argues that the DJ failed to consider Chong's co-operation with the authorities. Chong provided the authorities with all the necessary documents and recounted his knowledge in detail to facilitate the investigative process.[82] The DJ did not accord sufficient weight to this. The Prosecution's response is that any co-operation was already factored in by the DJ and was explicitly mentioned in the decision below.[83]

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82 Appellant's submissions, para 53.

83 Prosecution's submissions, para 33.

80 I am not satisfied that any substantial mitigation is made out beyond the plea of guilt, which already attracted a lower sentence than if he had claimed trial. Specifically, I am not satisfied that there was such substantial co-operation as claimed which merited further reduction beyond what was already effected by the DJ. As noted by the DJ, the other matters, particularly the strong public interest, required the imposition of a custodial sentence.[84] To my mind, the level of co-operation here is not so great as to displace that public interest.

Post-amendment offences

81 Though no benchmark guidance is sought, the Prosecution argues that there should be differentiation for the post-amendment offences committed after the 2014 amendments, which increased the maximum punishments.

82 The DJ declined to impose heavier sentences for post-amendment offences, finding that it was not the legislative intent for higher sentences to be imposed for all offences that were prosecuted after the 2014 amendments, applying the approach taken in *Public Prosecutor v GS Engineering & Construction Corp* [2017] 3 SLR 682 ("*GS Engineering*") at [46]–[49]. Rather, the objective of Parliament was to achieve consistency across the anti-terrorism legislative regimes,[85] such as the level of punishments under the Terrorism (Suppression of Financing) Act (Cap 325, 2003 Rev Ed) ("TSFA").

83 The Prosecution argues that while an increase in the maximum prescribed punishment does not by itself call for an increase in the sentences imposed on Chong, there was a clear emphasis on deterrence underlying the

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84 Grounds of Decision, [54] (ROA, pp 332–333).

85 Grounds of Decision, [63]–[64] (ROA, p 339).

2014 legislative amendment of s 5(1) of the UN Act.[86] Further, even though the present offences are not "terrorism-related" offences, they must be viewed in light of the legislative purpose of the UN-DPRK Regulations as a whole to implement the UNSC resolutions against the DPRK to counter the DPRK's increasingly aggressive nuclear activities.[87] The Prosecution points out that there was a rise of ballistic activities by the DPRK between 2012 to 2016.[88] It follows that the post-amendment breaches (which took place after 2014) would have caused greater harm to Singapore's reputation and international standing and therefore require greater deterrence, as the breaches were committed in the context of the DPRK's more frequent missile and nuclear testing.[89] Further, the DJ was inconsistent in enhancing the sentences for SCN and Laurich's post-amendment offences due to the number of violations of UN sanctions by the DPRK and number of new UNSC sanctions imposed in response to those violations post-amendment, but did not consider these same factors in calibrating Chong's sentence for the post-amendment offences.[90]

84 The Defence argues that the DJ was correct in declining to enhance the sentences imposed on the charges involving contravention after the 2014 amendments. The Defence cites *Mohammed Ibrahim s/o Hamzah v Public Prosecutor* [2015] 1 SLR 1081 (at [28]) for the proposition that an increase in the maximum punishment does not by itself lead to the imposition of higher sentences, and the court should impose a proportionate sentence. The court should take into account the rationale and intention behind the legislative

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86 Prosecution's submissions, para 41.

87 Prosecution's submissions, para 42.

88 Prosecution's submissions, para 45.

89 Prosecution's submissions, paras 45–46.

90 Prosecution's submissions, paras 48–51.

amendment (*GS Engineering* at [46]).[91] The full range of sentencing options should still be considered even if the maximum sentence is enhanced (*Pittis Stavros v Public Prosecutor* [2015] 3 SLR 181 at [62]). The parliamentary speech (second reading of the Statutes (Miscellaneous Amendments) Bill (Bill No 25/2013) (*Singapore Parliamentary Debates, Official Report* (21 January 2014) vol 91 (Ms Indranee Rajah, Senior Minister of State for Law)) shows that the amendments to the UN Act which increased the penalties were to specifically deter terrorism-related offences and to ensure consistency with the penalties under anti-terrorism legislation such as the TSFA. Here, the offences related only to luxury items and nothing shows that the sale of these luxury items facilitated the DPRK's nuclear weapons programme or terrorism.[92] Thus, the increase in the maximum punishment following the 2014 amendments does not mean that the sentences should be enhanced.

85 I accept, on the facts before me, that there should be an uplift for the post-amendment offences to reflect the greater harm to Singapore's reputation and standing flowing from the perceived need at the international level for greater action to be taken against the DPRK. This is especially so where increased nuclear testing was conducted, and belligerent statements were issued by the DPRK (see *Report of the Panel of Experts established pursuant to resolution 1874 (2009)* (11 June 2013) (S/2013/337) at para 5). Even though the luxury goods traded had no direct link to the DPRK's missile and nuclear activities, the baseline was nonetheless increased simply because of the enhanced need to deter any prohibited dealings with the DPRK. Flouting the UN sanctions in a period where tensions were running high due to the DPRK's increased ballistic testing and where the international community was banding

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91 Appellant's submissions, paras 26–27.

92 Appellant's submissions, paras 31–32.

together to take stronger action, would make Singapore stick out like a sore thumb.

86 While it is correct that the Minister's speech referred to the alignment of terrorism-related offences, it is clear to my mind that the objective of the amendments encompassed not just terrorism strictly speaking, but also threats generally to peace and security, including the contravention of the sanctions imposed against the DPRK.

Consistency with prior cases

87 Points were taken as to the consistency of the sentences with those imposed in another District Court case of *Ng Kheng Wah.* The Prosecution argues that the DJ misapprehended the difference between *Ng Kheng Wah* and the present case.

88 The framework in *Ng Kheng Wah* is not endorsed and should not be regarded as operative. Neither do I consider the unreported decision in *Public Prosecutor v Lim Cheng Hwee & SINSMS* DAC 920573/2019 & Ors (11 December 2020) to be useful here.

Assessment and calibration of the sentences

89 Taking all of the above factors into account, I find that there was significant harm and medium culpability. In summary, a fine would certainly not be an appropriate sentence and, in fact, the sentence imposed was far too lenient.

90 A global sentence of three weeks' imprisonment as imposed by the DJ does not give sufficient weight to the harm and culpability involved. The breakdown of the DJ's sentence was as follows:[93]

(a) one week's imprisonment for seven of the proceeded charges against Chong, other than DAC 934423/2018; and

(b) two weeks' imprisonment for DAC 934423/2018.

The DJ ordered two of the sentences to run consecutively, DAC 934401/2018 and DAC 934423/2018, giving three weeks' imprisonment total.[94] She imposed the two weeks' imprisonment for DAC 934423/2018 not because it was a post-amendment offence, but to take into account the higher value of trade involved, which was almost twice that of the other charges proceeded with.[95]

91 A more substantial sentence is called for given that there was substantial harm to Singapore's standing and reputation, and the criminal activity occurred over a few years. Planning was present, indicating a higher degree of culpability. The fact that substantial profits were made should also push the sentence upwards. It is also aggravating to some extent that the Appellant involved his secretary. In comparison, little weight can be placed on the mitigating factors.

92 I find that the DJ did not sufficiently calibrate the sentence in light of the harm that was caused. To my mind, a sentence of two weeks' imprisonment per pre-amendment offence and four weeks' imprisonment per post-amendment offence should have been imposed. Subject to my comments below, an

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93 Grounds of Decision, [66] (ROA, p 340).

94 Grounds of Decision, [67] (ROA, p 340).

95 Grounds of Decision, [66] (ROA, p 340).

appropriate sentence reflecting the harm caused and the culpability of Chong should have been six weeks' imprisonment globally, even accounting for the plea of guilt.

93 The reservation was that given the number of charges involved (43 in total), I would have thought that more sentences should have been run consecutively. The guidance laid down in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*") at [27] and [47], requires the court to have regard to the one-transaction rule and the totality principle. Consecutive sentences are not generally apt for a single invasion of the same legally protected interest under the one-transaction rule (*Shouffee* at [30]), but this would be subject to common sense. Under the totality principle, the aggregate sentence should remain proportionate to the criminal conduct and should not be crushing (*Shouffee* at [47] and [53]).

94 With the overall criminal conduct of Chong, and the blatant disregard for the restrictions imposed, it would have been appropriate to order more than two sentences to run consecutively. Such egregious conduct would have merited a separate sentencing response due to the long duration and the sheer number of charges involved.

95 However, as the Prosecution has only submitted for a sentence of six weeks upwards and above total, I will not impose a higher imprisonment sentence as such. I do note that the Prosecution has framed its submissions on the basis that it is seeking at least six weeks, implying that a higher sentence could be warranted. However, given the adversarial character of our criminal proceedings, I would be loath to go beyond the sentence sought in submissions unless the circumstances were so egregious. That is not the case here and a global sentence of six weeks' imprisonment for Chong is thus to be imposed.

The two weeks' imprisonment for DAC 934401/2018 (pre-amendment offence) and four weeks' imprisonment for DAC 934423/2018 (post-amendment offence) are to run consecutively, with the remaining sentences running concurrently.

Sentences imposed on corporate entities

96 The fines imposed on the three corporate entities are also enhanced.

The Prosecution's submissions

97 The Prosecution argues that the DJ failed to give sufficient weight to the various aggravating factors operating against the three companies:[96]

(a) against SCN, the number of charges taken into consideration, the high value of trade, the protracted offending, the profit motivation and the difficulty of detection because of the use of various companies in offshore jurisdictions;

(b) against Sindok, the two charges taken into consideration, the trade volume, profit motivation and the difficulty of detection; and

(c) against Laurich, the profit motivation and the difficulty of detection.

98 The Prosecution further argues that the DJ erred in determining that certain facts went to mitigation. The fact that the three companies were first-time offenders could not be significant, as multiple offences were involved.[97] The DJ also erred in giving mitigating weight to steps that were taken to prevent

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96 Prosecution's submissions, paras 77–78.

97 Prosecution's submissions, para 82.

violations and cease trading with the DPRK, because the cessation of business and winding down was done only after Chong was charged.[98] The companies were, in any event, suffering from a slowdown in business and the ceasing of operations was due to the diminishing financial viability of the business.[99] It is also argued that precedents indicated that higher sentences should be imposed on the companies.[100]

99 The primary plank of the Prosecution's arguments, though, is that a bifurcated approach targeting both punishment and disgorgement of profits should have been taken. The Prosecution submits that the bifurcated approach recognised in cases such as *Su Jiqing Joel* should have been adopted, to include both disgorgement and punitive elements.[101]

The Defence's submissions

100 The Defence argues that the DJ was correct in concluding that it was not necessary for the punitive component to be separated from the disgorgement component to ensure sufficient punishment for the three companies. The sentences imposed did serve to disgorge. Also, punishment was achieved through the imposition of custodial sentences on Chong (who was the directing mind and will of the companies), though the Defence argues that it was sufficient to impose a fine on him.[102]

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98 Prosecution's submissions, para 85.

99 Prosecution's submissions, para 84.

100 Prosecution's submissions, paras 86–88.

101 Prosecution's submissions, paras 89–91.

102 Respondent's submissions, paras 43–53.

101 The observations of the Honourable Chief Justice Sundaresh Menon in *Su Jiqing Joel* on the bifurcated approach should not be extended since, in that case, it was difficult to envisage situations where a maximum fine of $200,000 was appropriate solely to punish an offender based on the harm caused and his culpability for an offence under s 12(1) Planning Act (Cap 232, 1998 Rev Ed) relating to the unauthorised use of land. In contrast, it is possible to envisage situations where a maximum fine of $1 million is appropriate solely to punish an offender based on the harm caused and culpability in the context of offences punishable under s 5(1) of the UN Act as that punishment provision also applies to more serious offences such as supplying items which directly contribute to the DPRK's nuclear or missile programmes.[103]

Bifurcated approach

102 At the outset, the DJ highlighted in her written grounds that she did not have the benefit of the guidance in *Su Jiqing Joel* (decided on 30 October 2020) when she sentenced the respective parties on 12 October 2020.[104] Nevertheless, the DJ did not adopt a bifurcated approach as the UN Act did not specifically stipulate that the proceeds of crime could be forfeited, and that the punitive objectives were achieved through the imposition of the custodial sentence on Chong as he was the directing mind and will of the three companies. The DJ also found that the Prosecution did not explain why the high fines imposed could not disgorge the profits.[105]

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103 Respondent's submissions, paras 54–57.

104 Grounds of Decision, [92] (ROA, p 352).

105 Grounds of Decision, [93] (ROA, p 352).

The general law on bifurcation

103 Prior to cases such as *Su Jiqing Joel*, there was already a line of authority suggesting that even when an offender had been sentenced to an imprisonment term, the court may also impose an additional fine to disgorge the profits (see, *eg*, *Ding Si Yang v Public Prosecutor and another appeal* [2015] 2 SLR 229 at [109]). The concept of effecting punishment and disgorgement in a sentence is not novel.

104 I accept the general propositions of law argued for by the Prosecution. The law as laid down in the various cases does contemplate that the court has, in calibrating fines, to consider the fines operating both to punish and to disgorge, following *Koo Kah Yee v Public Prosecutor* [2021] 3 SLR 1440 (also handed down after the DJ's decision) at [39] and *Su Jiqing Joel* at [51]. Under the bifurcated approach, the court first determines how much to disgorge to negate the pecuniary gains of the offender, before considering the net detriment to be imposed on the offender to separately punish him in accordance with the harm caused and his culpability: *Su Jiqing Joel* at [41].

105 This approach operates even in the absence of any specific forfeiture provision. The precise parameters of this approach may be addressed on another occasion.

Punishment of corporate offenders

106 A substantial part of the Prosecution's arguments posits that the three corporate entities here should also be punished and that this should be considered separately from the punishment visited upon Chong since these

entities are legally distinct from him.[106] While it is true that the companies have legal personalities, and are treated by the law, at least for some purposes, as separate from the errant director, when it comes to punishment under the criminal law, the legal fiction runs up against the reality that companies cannot be punished in the same way as individuals: any punishment against a company will not be retributive, rehabilitative, or deterrent in nature as there is no moral agency in a company. As noted in *Auston International Group Ltd v Public Prosecutor* [2008] 1 SLR(R) 882 (at [19]): "A deterrent sentence has effect only on individuals, be they persons who commit the act and are liable for it, or managers responsible for steering the companies."

107 My view is that the punishment's effect, if any, takes place against the humans behind the company: the officers, shareholders, employees, and creditors. It may be questioned whether such punishment is truly effective or is overbroad by enveloping persons who may be innocent of any wrongdoing; it is entirely conceivable to have a legal system in which no corporate culpability exists, and everything is brought home to the human agents involved. But our legal system does prescribe punishment for corporations. The Legislature in so specifying such punishment must be taken to have made a conscious choice, to possibly have the effect that such corporate punishment resound to the detriment of those persons who may otherwise have not been involved or are wholly innocent of any moral culpability in the crime committed.

108 However, in considering the punishment of corporations, the different nature of the entities being punished must be taken into account. The usual sentencing objectives of rehabilitation, deterrence and retribution must be modified. As noted above, these objectives are targeted at human agency,

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106 Prosecution's submissions, paras 104–108.

decision-making or moral responsibility. In some objectives, such as deterrence, the distinction between the corporation and those behind it is elided: the human actors behind the corporation are those being deterred, not the corporation.

109 I pause to note the observations in *Lim Kopi Pte Ltd v Public Prosecutor* [2010] 2 SLR 413 ("*Lim Kopi*") at [11] (in the context of offences under the Employment of Foreign Manpower Act (Cap 91A, 1997 Rev Ed)) that the concept of deterrence is "applicable to companies, in the same way as it is applicable to individual offenders". I would hesitate to agree that such concepts are applicable "in the same way". Putting that aside, it was cautioned that where the corporate entity is essentially the *alter ego* of the errant director, one must be careful not to impose a deterrent fine on the corporate entity for exactly the same offence for which a deterrent sentence was already imposed on the errant director, as this is tantamount to imposing double deterrent sentences for the same offence: *Lim Kopi* at [18]. This accords with my view that the distinction between the human actors and the corporation is sometimes blurred when it comes to sentencing considerations. This will be kept in mind when calibrating the fines.

110 In the present case, under the statutory provisions, substantial fines are provided for. The precise jurisprudential basis for the punishment or retribution imposed on the corporate entities need not be explicated here; but the punishment of corporations reflecting some form of disapprobation or reckoning for the moral culpability, even of a corporation, seems to be accepted by the legislative scheme. Thus, a company committing an offence is ascribed some moral culpability or responsibility (see, *eg*, *Lim Kopi* at [11]), attracting some level of disadvantage imposed by the State. The calibration will have to be carried out on a robust basis.

111 That then leaves the possibility of disgorgement also operating in some sentences on top of the punitive element. The disgorgement is targeted at the pure economic benefit obtained by the company from its criminal actions.

Calibration of the punishment on the corporations here

112 I accept here that the fines imposed on the three companies were too low, in not capturing and distinguishing between both the punitive and disgorging aspects of monetary punishment. The punitive element must factor in both the harm and the culpability or responsibility for the actions. The disgorgement will generally be directly proportional to the economic or financial benefit derived.

113 The Prosecution relies on a sentencing matrix in its submissions.[107] However, given the Prosecution's avowed reluctance to put forward a sentencing framework because of the dearth of cases, I cannot see that there is, for that same reason, sufficient basis for the adoption of a matrix either. The issue is thus best left to another appellate court at a future juncture once more cases have been heard. Thus, the Prosecution's matrix is not adopted or endorsed. Rather, for guidance, I will indicate an initial starting point, that can be calibrated up or down depending on the circumstances. The proposed matrix by the Prosecution also purports to provide for fines for a range of behaviour. I do not think, though, that given the nature of the offence here, with potentially very many different kinds of behaviour possibly running foul, it would be appropriate to specify punishments in such a linear fashion, and it may be that certain offence situations may attract a higher sentence than would otherwise be the case.

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107 Prosecution's submissions, para 112.

114 Taking these matters into account, I am of the view that the fines imposed should be increased. This is despite the fact that punishment will in practical terms resound, if at all, on the shareholders or the employees of the corporate entities. There may be something to be said for directing punishment at the officers involved, whether for connivance or negligence, in allowing the corporate entity to commit the crimes. Nonetheless, the legislative choice has been made in Singapore that substantive punishment is to be levied on corporations. Such fines as are provided for here are not out of the norm.

115 I noted above at [109] that caution must be exercised not to impose double deterrent sentences, and it seemed that this was a concern of the DJ as well when she considered that the punitive objectives of deterrence and retribution were mostly achieved through the imposition of the custodial sentence on Chong.[108] However, I do not think that there would be any double counting here as there is a sufficiently strong public interest in deterring both individuals and corporate entities from breaching the UN-DPRK Regulations when it comes to matters that affect Singapore's international standing. Apart from specific deterrence, the disgorgement of profits also serves the objective of general deterrence and deters other offending companies from engaging in illegal behaviour as the law makes it clear that ill-gotten gains cannot be retained: *Su Jiqing Joel* at [50].

116 Given the nature of the offences here, generally the fines should start at the $10,000 range even for minimal infractions, for both pre-amendment and post-amendment offences. I reiterate that compliance with UNSC resolutions is paramount as they concern threats to international peace and security and any contravention could result in intentional condemnation (or even sanctions)

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108 Grounds of Decision, [93(c)] (ROA, p 352–353).

being directed at Singapore. Anything lower would not sufficiently protect the interests to be served by the legislation.

117 For post-amendment offences there is a wider spectrum of fines that can be imposed, which may take into account different levels of criminal behaviour. There should also be a general uplift in the fines for post-amendment offences as the reasons set out above at [85]–[86] apply with equal force to the enhancement of fines after the 2014 amendments.

118 In calibrating the fines, a number of factors come to mind including: the type of items involved (whether civilian or military, whether relating to the DPRK's missile or nuclear programme), the target market of the goods (whether for the general public or destined for use by the DPRK's senior regime figures), the value of the goods, the amount of subterfuge involved, and the adverse impact on Singapore's international standing. The factors considered in respect of calibrating the appropriate sentence for Chong would also be material here.

119 I note that, in common to all three corporate offenders, the offences only concerned the supply of general consumer luxury goods that were meant for the general population of the DPRK.[109] But even the trade of ordinary, quotidian goods may help sustain continued flouting of UN sanctions, and defeat the objectives of the international action. While the harm caused may be lower, the culpability of all three companies is medium given their primary business of supplying luxury goods to the DPRK.

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109 Grounds of Decision, [40] (ROA, p 328).

(1) SCN

120 Beginning with the pecuniary value to be disgorged in accordance with the framework set out in *Su Jiqing Joel* at [41], in respect of SCN, the total amount of gross profit made throughout the period of offending was approximately S$111,024.27, and this forms the disgorgement component.

121 Regarding the punitive component, I accept that the fine should be at least S$10,000, but taking into account, the number of charges (six proceeded charges with 33 taken into consideration), the amounts involved (total traded volume of S$492,328.89 and US$29,026.80), the surreptitious means used to avoid detection, I am of the view that for each of the pre-amendment offences, a fine of S$20,000 for the punitive component should be imposed based on the harm caused and culpability. This would give a total of S$40,000 for the two pre-amendment offences (DSC 900745/2018 and DSC 900747/2018).

122 As for the post-amendment offences, I am satisfied that considering the circumstances, particularly that the criminality had been going on for some time even after the 2014 amendments came into force, the punitive component of S$40,000 per charge should be imposed. The uplift given, as compared to pre-amendment offences, flowed from the greater harm to Singapore's reputation and greater need for deterrence as indicated above. This gives us a total of S$160,000 for the four post-amendment offences (DSC 900767/2018, DSC 900768/2018, DSC 900769/2018 and DSC 900765/2018).

123 Thus, the global fine to be imposed for SCN is S$311,000 in total after rounding.

(2) Sindok

124 As for Sindok, the profit made was about S$7,887.74 and this forms the disgorgement component. Given that there were two charges taken into consideration, with a total trade value of US$20,601.80 (or approximately S$27,921.62) and the avoidance of detection, the starting point should be a fine of S$15,000 for the punitive component for the single pre-amendment offence (DSC 900739/2018). The global fine to be imposed is S$23,000 after rounding.

(3) Laurich

125 Turning to Laurich, the profit made was about S$3,204.95 and this forms the disgorgement component. Given the circumstances where the total traded value was US$12,000.00 (or approximately S$16,263.60) for one occasion and the avoidance of detection, the punitive component would be S$27,000 for the single post-amendment offence (DSC 900740/2018). While there are fewer charges as compared to SCN and Sindok, the justification is that this was a post-amendment offence and it occurred at a time when there was a heightened need for response to the threats by the DPRK, increasing the harm caused. The global fine to be imposed is S$30,000 after rounding.

Global sentences

126 I note that the Prosecution's submissions were focused on the global sentences to be imposed for the offending parties. It is true that the totality of the sentence should be considered by the court. However, it is generally not appropriate, to my mind, to submit only on the global sentence without considering the individual sentences. Proportionality and appropriateness must be considered not just for the total, but also for each individual charge proceeded

with. Focusing only on the global position runs the risk of individual sentences being out of whack.

Conclusion

127 The Prosecution's appeals are thus allowed, though not entirely for the reasons put forward. The Defence's appeal is dismissed.

Aedit Abdullah
Judge of the High Court

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