Ho Sheng Yu Garreth *v* Public Prosecutor
[2012] SGHC 19

Case Number	: Magistrate's Appeal No 88 of 2011
Decision Date	: 30 January 2012
Tribunal/Court	: High Court
Coram	: V K Rajah JA
Counsel Name(s)	: S K Kumar (S Kumar Law Practice LLP) for the appellant; Edwin San (Attorney-General's Chambers) for the respondent; Kenneth Lim Tao Chung as amicus curiae.
Parties	: Ho Sheng Yu Garreth — Public Prosecutor

Constitutional Law

Criminal Law

Criminal Procedure and Sentencing

Statutory Interpretation

30 January 2012

V K Rajah JA:

Introduction

1 The appellant, Mr Ho Sheng Yu Garreth ("the Appellant"), a 39-year-old male Singaporean, faced 18 charges in the District Court of engaging in a conspiracy to carry on the business of moneylending without a licence. On 29 December 2010, he pleaded guilty to six charges and agreed to the remaining 12 charges being taken into consideration for the purposes of sentencing. The six charges which he pleaded guilty to were offences under s 14(1) of the Moneylenders Act (Cap 188, 2010 Rev Ed) ("the MLA 2010"), and were punishable under the same section as well as under s 14(1A), both read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"). In particular, the six charges, according to the amended Statement of Facts dated 29 December 2010 ("the Statement of Facts"), expressly stated that the Appellant had "abetted [Ku Teck Eng] and [Lee Kim Hock] by engaging in a conspiracy with them to carry on the business of [unlicensed] moneylending". [note: 1] The Appellant was convicted accordingly.

2 This was the second time that the Appellant was convicted of unlicensed moneylending. On 29 December 2008, the Appellant had been convicted of two charges of unlicensed moneylending under s 8(1)(*b*) of the Moneylenders Act (Cap 188, 1985 Rev Ed) ("the MLA 1985"), punishable under s 8(1)(i) of the MLA 1985 read with s 109 of the Penal Code (Cap 224, 1985 Rev Ed) ("the 1985 revised edition of the Penal Code"). It should be noted that the MLA 1985 was later repealed and re-enacted as the Moneylenders Act 2008 (Act 31 of 2008) ("the MLA 2008"), which was in turn amended to become the MLA 2010.

3 In view of the Appellant's previous moneylending offences, the Prosecution submitted that he was a repeat offender and was thus subject to the enhanced penalties (relating to fines and

imprisonment) under s 14(1)(*b*)(ii) of the MLA 2010 (see *Public Prosecutor v Ho Sheng Yu Garreth* [2011] SGDC 125 ("the GD") at [3]). The Prosecution, however, stopped short of seeking an enhanced sentence in respect of caning, which was available under s 14(1A)(*b*) of the MLA 2010. [note: 2] The District Judge ("the DJ") accepted the Prosecution's submission that the Appellant was a repeat offender for the purposes of s 14(1)(*b*)(ii) of the MLA 2010 and accordingly meted out a total sentence of 60 months' imprisonment, six strokes of the cane and a fine of $480,000 (in default, 24 months' imprisonment) (see the GD at [8]). Dissatisfied with the DJ's decision on sentencing, the Appellant initiated this appeal against his sentence.

4 At the hearing of the appeal, the preliminary issue (which was also the central issue) was whether the Appellant was liable for enhanced punishment under s 14(1)(*b*)(ii) of the MLA 2010 owing to his prior convictions under s 8(1)(*b*) of the MLA 1985. I decided that issue in the affirmative and did not disturb the custodial sentence imposed by the DJ. Nonetheless, I also thought it appropriate to halve the Appellant's sentences in respect of the fines and the caning as I considered the lower court's sentences manifestly excessive in the prevailing circumstances. I now give the detailed reasons for my decision. As these grounds are fairly lengthy, for ease of reference, I set out here an outline of the scheme adopted herein:

(1) Background facts (see [5]–[9] below)

a) The present convictions (see [10]–[13] below)

b) The previous convictions (see [14]–[15] below)

(2) The decision below (see [16]–[20] below)

(3) The preliminary issue (see [21] below)

a) The statutory provisions (see [22]–[25] below)

b) The Appellant's submissions (see [26]–[29] below)

c) The Prosecution's submissions (see [30]–[33] below)

d) The interpretational issues (see [34] below)

e) Determination of the interpretational issues (see [35] below)

i. Whether the repeal of s 8(1)(*b*) of the MLA 1985, in and of itself, meant that convictions made under it could not be taken into account as prior offences for the purposes of s 14(1)(*b*)(ii) of the MLA 2010 (see [36]–[42] below)

ii. Whether s 14(1)(*b*)(ii) of the MLA 2010 ought to be construed to take into account convictions under s 8(1)(*b*) of the MLA 1985 as prior offences

1. An issue of construction (see [43]–[45] below)

2. Whether the offences of carrying on the business of unlicensed moneylending and assisting in the same under s 14(1) of the MLA 2010 are the same in the context of s 14(1)(*b*)(ii) of the MLA 2010 (see [46]–[54] below)

a. Purposive interpretation as the cornerstone of statutory interpretation (see [55]–[57] below)

b. Legislative history of the offence of unlicensed moneylending (see [58]–[68] below)

c. The offences of carrying on the business of unlicensed moneylending and assisting in the same under s 14(1) of the MLA 2010 are the same in the context of s 14(1)(*b*)(ii) of the MLA 2010 (see [69]–[73] below)

3. Whether the moneylending offences under s 8(1)(*b*) of the MLA 1985 are the same as the offences described by s 14(1) of the MLA 2010 (see [74] below)

a. Different penalties for first offenders (see [75]–[87] below)

b. Different wording and structure (see [88]–[98] below)

4. Whether Parliament intended that convictions for moneylending offences under s 8(1)(*b*) of the MLA 1985 should count as prior convictions for the purposes of s 14(1)(*b*)(ii) of the MLA 2010

a. Absence of transitional and savings provisions (see [99]–[101] below)

b. To ignore prior convictions for unlicensed moneylending (and the abetting by intentional aiding thereof) under s 8(1)(*b*) of the MLA 1985 would defeat the legislative intention (see [102]–[103] below)

c. The Registration of Criminals Act (Cap 268, 1985 Rev Ed) ("the ROCA") (see [104] below)

iii. Whether treating the Appellant's present offences as repeat offences under the MLA 2010 would contravene Art 11(1) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution") (see [105]–[112] below)

iv. Summary and determination of the preliminary issue (see [113]–[120] below)

(4) Reduction of the Appellant's sentence in respect of fines and caning (see [121] below)

a) Fines (see [122]–[131] below)

b) Caning (see [132]–[134] below)

c) Imprisonment (see [135]–[136] below)

(5) Observation (see [137]–[138] below)

(6) Conclusion (see [139] below)

Background facts

5 The Appellant was arrested on 4 September 2010 at the void deck of Block 624 Yishun Ring Road. With him were three accomplices: Ku Teck Eng ("B2"), Lee Kim Hock ("B3") and Tan Cheng Huat

Melvin ("B4"). Each of the accomplices was prosecuted in separate criminal proceedings. As those proceedings have no direct relevance to this appeal, I shall not elaborate upon them.

6 The facts of the case admitted to by the Appellant are contained in the Statement of Facts tendered in the District Court proceedings below. According to the Statement of Facts, B2 and B3 started an unlicensed moneylending business together in or around September 2009. It was agreed between them that B3 was to provide a capital sum of $20,000 to finance the business, which was to be run by B2.

7 Sometime in November 2009, B2 recruited B4 to assist in the unlicensed moneylending business in return for 30% of the profits made from the business (the remaining 70% of the profits were to be split equally between B2 and B3). B4's role was to canvass for borrowers and to issue loans to them at an interest rate of 20%. In order to keep track of their dealings, B2 and B4 each maintained a set of identical records comprising the debtors' particulars, details of the loans issued and the repayments received. B2 and B4 met up once in two days to compare and update their respective records. Once a week, B3 met B2 to inspect the records so as to be kept abreast of the profits made.

8 It was only later in April 2010 that the Appellant came into the picture. He was introduced by B4 to B2, who learnt that the Appellant was working as a runner for an unlicensed moneylender known as "Sam". Subsequently, in around July 2010, B2 discovered that B4 had been dishonestly using fictitious particulars to siphon money away from the unlicensed moneylending business. As a result, B2 recruited the Appellant to take B4's place in around August 2010 on terms that the Appellant would receive 30% of the profits made from the business. Accordingly, the Appellant assumed B4's role of canvassing for borrowers, issuing loans at the interest rate of 20% as well as collecting repayments from debtors. The Appellant also took over the records maintained by B4 and ceased working for "Sam". Significantly, the Appellant was later introduced by B2 to B3 as a new partner in their unlicensed moneylending business.

9 At the point of the Appellant's arrest, the amount of loans in circulation was estimated to be around $41,000, with a pool of about 45 debtors. This sum of money represented the profits made from the unlicensed moneylending business. By the time B4 left the unlicensed moneylending business, he had collected about $5,000 as his share of the profits. B2 collected a sum of about $5,000 as his share. B3 recovered his capital sum of $20,000 sometime in May 2010 and made a profit of about $12,000 from the unlicensed moneylending business. As for the Appellant, he received just $600 as his share of the profits (see [124] below).

The present convictions

10 Of the six charges which the Appellant pleaded guilty to, three (*viz*, the first, second and fifth charges) were for issuing loans in furtherance of a conspiracy to carry on the business of unlicensed moneylending, and three (*viz*, the eighth, eleventh and twelfth charges) were for collecting repayments in consequence of that conspiracy. The first charge (for issuing a loan in furtherance of a conspiracy to carry on the business of unlicensed moneylending) read as follows: [note: 3]

> You,
>
> [the Appellant]
>
> …
>
> are charged that you, between July 2010 to August 2010, did abet by engaging in a conspiracy

with [B2] and [B3], for the doing of a thing, to wit, to carry on the business of moneylending under the alias of 'Jeff', without holding a licence, and in pursuance of that conspiracy and in order to the doing of that thing, an act took place on the 27th day of August 2010, at the void deck of Block 846 Yishun Ring Road, Singapore, where you issued a loan of S$1000/- to one Pang Khia Chuan at an interest rate of 20% repayable over eight consecutive weeks, when all of you are not excluded moneylenders or exempt moneylenders or authorised to do so by licence, which offence under Section 5(1) of the Moneylenders Act (Revised Edition 2010), Chapter 188 [*viz*, the MLA 2010] was committed in consequence of that conspiracy, and you have thereby committed an offence under Section 14(1)(b)(i) and Section 14(1A)(a) of the said Act read with Section 109 of the Penal Code, Chapter 224.

And further, prior to the commission of the said offence, on the 29th day of December 2008, [you] had been convicted in Subordinate Court No. 2, of an offence under Section 8(1)(b)(i) of the Moneylenders Act, Chapter 188 [*viz*, the MLA 1985] read with Section 109 of the Penal Code, Chapter 224 [*viz*, the 1985 revised edition of the Penal Code] and sentenced to 5 months' imprisonment, which conviction has not been set aside, and you are thereby liable for enhanced punishment under Section 14(1)(b)(ii) and Section 14(1A)(a) of the Moneylenders Act (Revised Edition 2010).

The second and fifth charges were identically worded save for differences immaterial to the present appeal, such as in the Appellant's aliases, the locations at which the loans were issued and the names of the borrowers specified.

11 The eighth charge (for collecting repayment of a loan in consequence of a conspiracy to carry on the business of unlicensed moneylending) read as follows: [note: 4]

You,

[the Appellant]

…

are charged that you, between July 2010 to August 2010, did abet by engaging in a conspiracy with [B2] and [B3], for the doing of a thing, to wit, to carry on the business of moneylending under the alias of 'Jack', without holding a licence, and in pursuance of that conspiracy and in order to the doing of that thing, an act took place on the 23rd day of August 2010, at the vicinity of Block 85 Bedok North, Singapore, where you collected repayment of a sum of $400/- from one Ho Chi Wei, pertaining to a loan of $2,000/- issued at an interest rate of 20%, when all of you are not excluded moneylenders or exempt moneylenders or authorised to do so by licence, which offence under Section 5(1) of the Moneylenders Act (Revised Edition 2010), Chapter 188 [*viz*, the MLA 2010] was committed in consequence of that conspiracy, and you have thereby committed an offence under Section 14(1)(b)(i) and Section 14(1A)(a) of the said Act read with Section 109 of the Penal Code, Chapter 224.

And further, prior to the commission of the said offence, on the 29th day of December 2008, [you] had been convicted in Subordinate Court No. 2, of an offence under Section 8(1)(b)(i) of the Moneylenders Act, Chapter 188 [*viz*, the MLA 1985] read with Section 109 of the Penal Code, Chapter 224 [*viz*, the 1985 revised edition of the Penal Code] and sentenced to 5 months[']' imprisonment, which conviction has not been set aside, and you are thereby liable for enhanced punishment under Section 14(1)(b)(ii) and Section 14(1A)(a) of the Moneylenders Act (Revised

Edition 2010).

12 Again, the eleventh and twelfth charges were identically worded save for differences that were immaterial to the present appeal, such as in the Appellant's aliases, the sums of money collected, the locations at which the collections took place and the names of the borrowers specified.

13 As can be seen, all the present charges referred to the Appellant's previous convictions for unlicensed moneylending under s 8(1)(*b*) of the MLA 1985 on 29 December 2008.

The previous convictions

14 The record showed that the Appellant had previously been convicted of two charges of abetting (by intentionally aiding) an offence under s 8(1)(*b*) of the MLA 1985 (specifically, the offence of carrying on an unlicensed moneylending business) by handing over sums of money to a runner for an unlicensed moneylending syndicate. The two charges of which the Appellant was convicted were identically worded save for the locations where the offences were committed and the sums of money handed over. I set the first of these charges out in full as follows: [note: 5]

> You,
>
> [the Appellant]
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> …
>
> are charged that you, sometime in mid of Nov 2008, at the vicinity of Sengkang near to Shell petrol [k]iosk, Singapore, did abet an unlicensed moneylending syndicate, under the alias of "Ah Boon", to carry out a moneylending business without holding a licence to carry out such business, in that you intentionally aided the said syndicate, to wit, by handing over a sum of $1050/- to Tan Ming Hong who is a runner working for the said syndicate, which offence was committed in consequence of your abetment, and you have thereby committed an offence contrary to Section 8(1)(b) and punishable under Section 8(1) of the Moneylenders Act, Chapter 188 [*viz*, the MLA 1985] read with Section 109 of the Penal Code, Chapter 224 [*viz*, the 1985 revised edition of the Penal Code].

15 The Appellant was sentenced to five months' imprisonment for each of the two previous charges, with the imprisonment terms ordered to be served concurrently. [note: 6]

The decision below

16 In sentencing the Appellant, the DJ agreed with the Prosecution that a deterrent sentence was called for because the Appellant was carrying on an illegal moneylending business for profit (see the GD at [5]). He noted further that this was a "highly organised syndicated illegal moneylending operation which charged [a] very high interest rate to the debtors" (see the GD at [7(e)]). Although the DJ considered the Appellant's mitigation plea and his prompt plea of guilt, he observed that in cases of illegal moneylending, the overriding principle of sentencing was "clearly based on deterrence" (see the GD at [7(a)]).

17 The DJ also took into account the prevalence of illegal moneylending activities in Singapore in recent times (see the GD at [7(b)]). In addition, he considered that these activities, which were generally well planned and difficult to detect (see the GD at [7(c)]), affected public safety and caused public fear and disquiet (see the GD at [7(d)]).

18 The DJ further referred to the parliamentary debates on 21 November 2005 during the second reading of the Moneylenders (Amendment) Bill 2005 (Bill 28 of 2005), observing that Parliament had "clearly stated its zero tolerance policy against illegal moneylending activities" (see the GD at [7(f)]).

19 Considering all the circumstances, the DJ was of the view that a clear message must be sent to illegal moneylending business operators that a deterrent sentence would be imposed for moneylending offences. He further stated that the sentence in the Appellant's case must deter both the offender (*ie*, the Appellant) and potential offenders. The DJ also made clear his awareness that any deterrent sentence must be tempered by proportionality in relation to the severity of the offence as well as the offender's culpability (see the GD at [8]).

20 Accordingly, the DJ sentenced the Appellant to a fine of $80,000 (in default, four months' imprisonment), 20 months' imprisonment and one stroke of the cane for each of the six charges proceeded on. The imprisonment sentences for three of the charges were ordered to run consecutively, giving a total sentence of 60 months' imprisonment, a fine of $480,000 (in default, 24 months' imprisonment) and six strokes of the cane (see the GD at [8]).

The preliminary issue

21 The central plank of the Appellant's submissions was an imaginative argument that he was a first offender under the MLA 2010 and should not be liable for enhanced punishment under s 14(1)(*b*)(ii) of the MLA 2010. This in turn raised the issue of whether the Appellant was liable for enhanced punishment under s 14(1)(*b*)(ii) of the MLA 2010 on account of his previous convictions under s 8(1)(*b*) of the MLA 1985. I dealt with this as a preliminary issue because had the Appellant succeeded on this front, then the maximum imprisonment sentence for his offences would have been four years (see s 14(1)(*b*)(i) of the MLA 2010) instead of seven years (see s 14(1)(*b*)(ii) of the MLA 2010). That, in itself, would have been a *prima facie* justification to recalibrate his custodial sentence downwards significantly. Therefore, I thought it sensible to first determine the applicable maximum imprisonment sentence for the Appellant's offences before considering the remainder of the submissions on his behalf, which went towards determining an appropriate total sentence in his case.

The statutory provisions

22 Before going further, it is necessary to set out the relevant statutory provisions. As mentioned earlier, the Appellant was previously convicted under s 8(1)(*b*) of the MLA 1985, and was punished under s 8(1)(i) of the MLA 1985 read with s 109 of the 1985 revised edition of the Penal Code. Section 8(1) of the MLA 1985 (as it stood when the Appellant committed his earlier moneylending offences in November 2008) [note: 7] was worded as follows:

> **Offences**
>
> **8.—(1)** If any person —
>
> (*a*) takes out a licence in any name other than his true name;
>
> (*b*) carries on business as a moneylender without holding a licence or, being licensed as a moneylender, carries on business as such in any name other than his authorised name or at any place other than his authorised address or addresses; or
>
> (*c*) in the course of business as a moneylender enters as principal or agent into any agreement with respect to any advance or repayment of money or takes any security for

money otherwise than in his authorised name,

he shall be guilty of an offence and —

(i) in the case of a first offence, shall be liable on conviction to a fine of not less than $20,000 and not more than $200,000 or to imprisonment for a term not exceeding 2 years or to both;

(ii) in the case of a second or subsequent offence, shall be liable on conviction to a fine of not less than $20,000 and not more than $200,000 and shall also be punished with imprisonment for a term not exceeding 5 years; and

(iii) in the case of an offender being a company, shall be liable on conviction to a fine of not less than $40,000 and not more than $400,000:

Provided that a moneylender who is not, or in the case of a firm none of the partners of which are, ordinarily resident in Singapore may without being guilty thereby of an offence carry on business in Singapore without holding a licence if he carries on the business solely through an agent duly licensed under this Act to carry on such business in Singapore under the name of that moneylender.

23 In contrast, the present appeal concerned the Appellant's more recent conduct in contravention of s 5(1) of the MLA 2010, which constituted offences (and were thus punishable) under ss 14(1) and 14(1A) of the MLA 2010 read with s 109 of the Penal Code. The relevant provisions of the MLA 2010, as they stood at the time of the Appellant's present offences, are as follows:

No moneylending except under licence, etc.

5.—(1) No person shall carry on or hold himself out in any way as carrying on the business of moneylending in Singapore, whether as principal or as agent, unless —

(*a*) he is authorised to do so by a licence;

(*b*) he is an excluded moneylender; or

(*c*) he is an exempt moneylender.

...

Unlicensed moneylending

14.—(1) Subject to subsection (1A), any person who contravenes, or who assists in the contravention of, section 5(1) shall be guilty of an offence and —

(*a*) in the case where the person is a body corporate, shall on conviction be punished with a fine of not less than $50,000 and not more than $500,000; or

(*b*) in any other case —

(i) shall on conviction be punished with a fine of not less than $30,000 and not more than $300,000 and with imprisonment for a term not exceeding 4 years; and

(ii) in the case of a second or subsequent offence, shall on conviction be punished with a fine of not less than $30,000 and not more than $300,000 and with imprisonment for a term not exceeding 7 years.

(1A) Subject to section 231 of the Criminal Procedure Code (Cap. 68) —

(*a*) a person who is convicted for the first time of an offence under subsection (1) shall also be liable to be punished with caning with not more than 6 strokes; or

(*b*) a person who is convicted of a second or subsequent offence under subsection (1) shall also be liable to be punished with caning with not more than 12 strokes.

…

24 As can be seen, ss 14(1)(*b*)(ii) and 14(1A)(*b*) of the MLA 2010 provide for enhanced sentences when a person is convicted of a "second or subsequent offence". It should be noted that the present appeal pertained only to s 14(1)(*b*)(ii) of the MLA 2010 because, as stated above at [3], the Prosecution did not seek an enhanced sentence in respect of caning. [note: 8] Nevertheless, I should add that there is no reason why my holdings regarding s 14(1)(*b*)(ii) of the MLA 2010 should not have applied similarly in relation to s 14(1A)(*b*) of the MLA 2010 had that provision been in issue as well.

25 Finally, s 109 of the Penal Code provides as follows:

Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations

(*a*) *A* offers a bribe to *B*, a public servant, as a reward for showing *A* some favour in the exercise of *B*'s official functions. *B* accepts the bribe. *A* has abetted the offence defined in section 161 [of the Penal Code].

(*b*) *A* instigates *B* to give false evidence. *B*, in consequence of the instigation, commits that offence. *A* is guilty of abetting that offence, and is liable to the same punishment as *B*.

(*c*) *A* and *B* conspire to poison *Z*. *A*, in pursuance of the conspiracy, procures the poison and delivers it to *B*, in order that he may administer it to *Z*. *B*, in pursuance of the conspiracy, administers the poison to *Z*, in *A*'s absence and thereby causes *Z*'s death. Here *B* is guilty of murder. *A* is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

The Appellant's submissions

26 Mr S K Kumar ("Mr Kumar"), counsel for the Appellant, vigorously asserted that the DJ erred in treating the Appellant as a repeat offender under the MLA 2010. [note: 9] First, Mr Kumar submitted that s 8(1)(*b*) of the MLA 1985, under which the Appellant was previously convicted, had been repealed. [note: 10] Second, he argued that the word "offence" in s 14(1)(*b*)(ii) of the MLA 2010 must precisely refer only to an offence defined by s 14(1) of the MLA 2010, *viz*, the offence of contravening (or assisting in the contravention of) s 5(1) of the MLA 2010. [note: 11] He further submitted that such offence was different from the offence of unlicensed moneylending under s 8(1)(*b*) of the MLA 1985 in two ways.

27 The first difference was that the punishment for a first offender under s 14(1)(*b*)(i) of the MLA 2010 was plainly heavier than the corresponding punishment under s 8(1)(i) of the MLA 1985. [note: 12] In this regard, Mr Kumar also suggested that even if the court treated the Appellant as a first offender under the MLA 2010, it would be free to take his prior convictions into account as aggravating factors and impose a slightly higher punishment. [note: 13]

28 The second difference (according to Mr Kumar) lay in the fact that s 14(1) of the MLA 2010 created the new offence of *assisting* in the carrying on of the business of unlicensed moneylending. [note: 14] Therefore, s 14(1) of the MLA 2010 described two offences (*viz*, the principal offence of carrying on the business of unlicensed moneylending and the offence of assisting in that principal offence) and not one. In contrast, s 8(1)(*b*) of the MLA 1985 only described the principal offence of carrying on the business of unlicensed moneylending. Mr Kumar submitted that while the Appellant's previous offences under s 8(1)(*b*) of the MLA 1985 were for *abetting* the carrying on of an unlicensed moneylending business, [note: 15] the Appellant's present offences were in the nature of *assisting* in the carrying on of an unlicensed moneylending business. [note: 16] These offences, Mr Kumar maintained, were altogether different from the Appellant's previous offences.

29 Third, Mr Kumar argued that if Parliament had intended the provisions for enhanced punishment under the MLA 2010 to take into account previous offences committed under the MLA 1985, then the MLA 2010 would have specifically provided for it. [note: 17] Finally, Mr Kumar submitted that treating the Appellant as a repeat offender for the purposes of s 14(1)(*b*)(ii) of the MLA 2010 on account of his prior convictions under s 8(1)(*b*) of the MLA 1985 would contravene Art 11(1) of the Constitution, [note: 18] which provides as follows:

> **Protection against retrospective criminal laws and repeated trials**
>
> **11.**—(1) No person shall be punished for an act or omission which was not punishable by law when it was done or made, and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.

The Prosecution's submissions

31 Mr Edwin San ("Mr San") for the Prosecution submitted, first, that the Appellant's convictions under the MLA 1985 did not cease to exist on account of the purported "repeal" of that Act. [note: 19] Second, Mr San argued that Parliament could not have intended the repeal of the MLA 1985 to "[wipe] the slate clean" [note: 20] for offenders convicted of offences under that Act. Third, Mr San submitted that the offence described by s 14(1) of the MLA 2010 was substantively the same as that under s 8(1)(*b*) of the MLA 1985 since both provisions criminalised, *inter alia*, the carrying on of the

business of moneylending without a licence. [note: 21] On that point, he emphasised that there had been no change to the constituent elements of the offence. [note: 22]

31 Fourth, Mr San also tried to rely on s 7E of the ROCA, which deals with the consequences of criminal records becoming or being treated as spent, to show that Parliament's intention was for convictions under the MLA 1985 to be taken into account for the purposes of court proceedings pursuant to the MLA 2010. [note: 23] In particular, Mr San drew attention to ss 7E(2)(*b*) and 7E(2)(*c*) of the ROCA as well as the relevant debates in Parliament to show that although the ROCA provided for an offender's previous conviction to be treated as spent under certain circumstances, Parliament did not intend this to amount to an expunging of the offender's criminal record "for purposes of court proceedings" [emphasis in original omitted]. [note: 24] Accordingly, Mr San argued, given Parliament's reluctance to expunge an offender's criminal records wholly (even for minor crimes), Parliament could not have intended an offender's previous conviction to be disregarded only because that previous conviction lay under legislation which had since been repealed. [note: 25]

32 Fifth, Mr San cited s 16(1)(*d*) of the Interpretation Act (Cap 1, 2002 Rev Ed) ("the IA") to support his argument that the repeal of the MLA 1985 did not affect the punishment in respect of an offence committed under that Act. [note: 26] Finally, Mr San submitted that the absence of transitional and savings provisions in the MLA 2010 did not prevent the court from considering previous convictions under the MLA 1985 when determining whether an offender's present offences under the MLA 2010 counted as "second or subsequent" offences for the purposes of s 14(1)(*b*)(ii) of the MLA 2010. [note: 27]

33 The gist of Mr San's submissions was that the repeal of the MLA 1985 and its simultaneous reincarnation in the form of the MLA 2008 must be regarded as "a continuation and affirmation of the statute in uninterrupted operation". [note: 28]

The interpretational issues

34 In essence, the submissions made by both sides centred on the following three key interpretational issues:

(a) whether the repeal of s 8(1)(*b*) of the MLA 1985, in and of itself, meant that convictions made under it could not be taken into account as prior offences for the purposes of s 14(1)(*b*)(ii) of the MLA 2010;

(b) whether s 14(1)(*b*)(ii) of the MLA 2010 ought to be construed to take into account convictions under s 8(1)(*b*) of the MLA 1985 as prior offences; and

(c) whether treating the Appellant's present offences as repeat offences under s 14(1)(*b*)(ii) of the MLA 2010 would contravene Art 11(1) of the Constitution.

Determination of the interpretational issues

35 Before I deal with the parties' arguments, I ought to acknowledge the assistance which I received from the submissions made by both Mr Kumar and Mr San. I also found the submissions made by the *amicus curiae*, Mr Kenneth Lim Tao Chung ("Mr Lim") from Allen & Gledhill LLP, helpful. Mr Lim was appointed under the Supreme Court's Young *Amicus Curiae* scheme to address the preliminary issue at hand, *viz*, whether the Appellant had been correctly held to be liable for enhanced

punishment under s 14(1)(*b*)(ii) of the MLA 2010. [note: 29] Mr Lim's submissions set out with clarity the applicable law on the relevant issues. Also, for the avoidance of doubt, I should add that the terms "interpretation" and "construction" and their derivatives have been used interchangeably in these grounds.

Whether the repeal of s 8(1)(b) of the MLA 1985, in and of itself, meant that convictions made under it could not be taken into account as prior offences for the purposes of s 14(1)(b)(ii) of the MLA 2010

36 I begin by dealing briefly with the threshold issue of whether the Appellant could succeed on the preliminary issue in this appeal simply because s 8(1)(*b*) of the MLA 1985, the provision under which he was previously convicted, had been repealed.

37 Mr Kumar submitted that since the Appellant's prior convictions were under s 8(1)(*b*) of the MLA 1985, which had been repealed, the Appellant could not be considered a repeat offender for the purposes of the MLA 2010. Mr Kumar's submission was principally founded on the preamble of the MLA 2008, which reads as follows:

> An Act to *repeal and re-enact* with amendments the Moneylenders Act (Chapter 188 of the 1985 Revised Edition) for the regulation of moneylending and for matters connected therewith, and to make consequential amendments to the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Chapter 65A of the 2000 Revised Edition) and the Registration of Criminals Act (Chapter 268 of the 1985 Revised Edition). [emphasis added]

38 The Court of Appeal considered a similar argument in the case of *Public Prosecutor v Tan Teck Hin* [1992] 1 SLR(R) 672 ("*Tan Teck Hin*"). The respondent in that case was convicted of a drink driving charge under s 67(1) of the Road Traffic Act (Cap 276, 1985 Rev Ed) ("the RTA"). He had a previous conviction under the same subsection of the RTA. However, in between his two convictions, the version of s 67(1) in force at the time of his first conviction ("the repealed s 67(1) RTA") was repealed by the Road Traffic (Amendment) Act 1990 (Act 7 of 1990) and re-enacted to give a new version of s 67(1) ("the re-enacted s 67(1) RTA"), which raised the existing penalties for both first and repeat offenders.

39 The Prosecution reserved to the Court of Appeal the question of whether the respondent should be treated as a repeat offender for the purposes of the re-enacted s 67(1) RTA. The respondent's counsel, in contending that the question should be answered in the negative, argued (*inter alia*) that the fact that the repealed s 67(1) RTA had been repealed meant that the offence under it had ceased to exist. Therefore, an offence under the repealed s 67(1) RTA could not count as a prior offence for the purposes of the re-enacted s 67(1) RTA (see *Tan Teck Hin* at [17]–[18]). The Court of Appeal unequivocally disagreed with that proposition and answered the question reserved by the Prosecution in the affirmative; *ie*, it held that the respondent was a repeat offender for the purposes of the re-enacted s 67(1) RTA. In its view (see *Tan Teck Hin* at [26]), there was no magic in the use of the word "repeal", and the fact that the repealed s 67(1) RTA no longer had force did not assist the court in construing the re-enacted s 67(1) RTA. The Court of Appeal further held (see *Tan Teck Hin* at [33]):

> … The conviction of the respondent under s 67(1) before the "repeal" [*ie*, under the repealed s 67(1) RTA] is a fact which did not cease to exist on the "repeal". ... He remained as a person who had been so convicted. ... [T]here is no question of the "repeal" affecting the subsistence of this fact. …

40 Both Mr San and Mr Lim rightly drew to my attention s 16(1) of the IA, [note: 30] the relevant parts of which are as follows:

> **Effect of repeal**
>
> **16.**—(1) Where a written law repeals in whole or in part any other written law, then, unless the contrary intention appears, the repeal shall not —
>
> ...
>
> (*b*) *affect the previous operation of any written law so repealed or anything duly done or suffered under any written law so repealed*;
>
> ...
>
> (*d*) *affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any written law so repealed …*
>
> …
>
> [emphasis added]

Unfortunately for Mr Kumar, this appears to lend support to the Prosecution's contention that the repeal of s 8(1)(*b*) of the MLA 1985 did not affect the continuing existence of the fact of the Appellant's previous convictions under that provision.

41 Further, I also pointed out to Mr Kumar that s 2(1) of the IA expressly defined "repeal" in the following non-exhaustive manner:

> "repeal" includes rescind, revoke, cancel or *replace …* [emphasis added]

Plainly, the word "repeal" is an etymological chameleon that takes colour from its context. It seems to me that "replace" is the correct meaning to be ascribed to "repeal" in the present context. Since the MLA 2008 simply "replaced" and re-enacted (see the preamble reproduced above at [37]) the MLA 1985, there was no break in the continuum between the legislative regime under the MLA 1985 and that under the MLA 2008 (which was later amended and revised to become the MLA 2010). As such, there is little force in the proposition that an offence under s 8(1)(*b*) of the MLA 1985 cannot be taken into account as a prior offence for the purposes of s 14(1)(*b*)(ii) of the MLA 2010 simply because s 8(1)(*b*) of the MLA 1985 has been repealed.

42 For the reasons outlined above, it is clear in the present case that the fact that s 8(1)(*b*) of the MLA 1985 has been repealed is in itself of little significance. As Mr San rightly submitted, such repeal does not have the effect of wiping the slate clean for those previously convicted under s 8(1)(*b*) of the MLA 1985. Instead, as alluded to above at [39], the question depends on the proper construction of s 14(1)(*b*)(ii) of the MLA 2010, to which I now turn.

Whether s 14(1)(b)(ii) of the MLA 2010 ought to be construed to take into account convictions under s 8(1)(b) of the MLA 1985 as prior offences

(1) An issue of construction

43 In *Tan Teck Hin*, the Court of Appeal, having dismissed the notion that that the word "repeal" had any significance in itself, clarified that the central issue was really one of construction of the re-enacted s 67(1) RTA (see *Tan Teck Hin* at [34]):

> What is before us is simply whether a conviction under s 67(1) before its "repeal" [*ie*, a conviction under the repealed s 67(1) RTA] can properly be taken into account when applying the subsection after its "repeal" [*ie*, when applying the re-enacted s 67(1) RTA]. *The issue is one of construction, of ascertaining the intention of Parliament when enacting the new provision.* [emphasis added]

44 The Court of Appeal went on to resolve that question of construction by having regard to, *inter alia*, Parliament's intention. Indeed, legislative intention is now the cornerstone of statutory interpretation in the Singapore context as this is statutorily mandated by s 9A of the IA, which was introduced by Parliament via the Interpretation (Amendment) Act 1993 (Act 11 of 1993) (see further below at [55]–[56]; in this regard, it should be noted that *Tan Teck Hin* was decided before s 9A of the IA was enacted). After comparing the repealed s 67(1) RTA and the re-enacted s 67(1) RTA, the Court of Appeal found that Parliament intended convictions under the repealed s 67(1) RTA to count as prior convictions for the purposes of the re-enacted s 67(1) RTA (see *Tan Teck Hin* at [35]). Accordingly, it answered the question reserved by the Prosecution in the affirmative (see above at [39]).

45 In the same vein, the present issue of whether the Appellant's convictions under s 8(1)(*b*) of the MLA 1985 could properly be taken into account for the purposes of s 14(1)(*b*)(ii) of the MLA 2010 is one of construction of the latter provision.

(2) Whether the offences of carrying on the business of unlicensed moneylending and assisting in the same under s 14(1) of the MLA 2010 are the same in the context of s 14(1)(*b*)(ii) of the MLA 2010

46 Before drawing s 8(1)(*b*) of the MLA 1985 into the picture, I move first to address an issue pertaining solely to s 14(1) of the MLA 2010. Section 14(1)(*b*)(ii) of the MLA 2010 refers to a "second or subsequent offence" without explaining what constitutes a first offence. However, having regard to the two-part structure of s 14(1)(*b*) of the MLA 2010 and given that s 14(1)(*b*)(i) of the MLA 2010 stipulates the punishment for what must be a first offence under s 14(1) of the MLA 2010, the first offence which s 14(1)(*b*)(ii) of the MLA 2010 contemplates must be an offence described by s 14(1) of the MLA 2010. As stated above at [28], Mr Kumar pointed out in his submissions that s 14(1) of the MLA 2010 encompasses not one, but two offences: that of contravening s 5(1) of the MLA 2010 and that of *assisting* in the contravention of s 5(1) of the MLA 2010.

47 It is obvious that in the absence of clear statutory provision to the contrary, a subsequent offence can only be considered a *repeat offence* if it is the same as the prior offence; otherwise, the two offences would be different and the subsequent offence would not be a repeat offence. Mr Kumar's observation therefore raised the question of whether the offences of carrying on the business of unlicensed moneylending and assisting in the same under s 14(1) of the MLA 2010 are the same in the context of s 14(1)(*b*)(ii) of the MLA 2010.

48 Mr Kumar helpfully drew my attention to the South Australian Supreme Court case of *Bartlett v D'Rozario* [1971] SASR 88 ("*Bartlett*"). That case concerned s 47 of the Road Traffic Act 1961–1967 ("the Aust RTA"), the relevant parts of which were as follows:

> **47.** (1) A person shall not––

(*a*) *drive a vehicle*; or

(*b*) *attempt to put a vehicle in motion*,

while he is so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle.

Penalty—

(*a*) If the vehicle concerned was a motor vehicle—

(i) for a first offence, not less than sixty and not more than two hundred dollars or imprisonment for not more than three months and, in either case, disqualification from holding and obtaining a driver's licence for such period as the court thinks fit, but in no case less than three months;

(ii) for a second offence, imprisonment for not less than one month and not more than six months and disqualification from holding and obtaining a driver's licence for such period as the court thinks fit, but not less than six months;

(iii) for a third or subsequent offence, imprisonment for not less than three months and not more than twelve months and disqualification from holding and obtaining a driver's licence for such period as the court thinks fit, but not less than three years;

(*b*) if the vehicle concerned was not a motor vehicle, one hundred dollars.

...

(3) In determining whether an offence is a first, second, third or subsequent offence within the meaning of subsection (1) of this section, a previous offence for which the defendant was convicted more than five years before the commission of the offence under consideration shall not be taken into account, but a previous offence for which the defendant was convicted within the said period shall be so taken into account, whether the conviction took place before or after the commencement of this Act.

…

[emphasis added]

49 One of the questions raised in *Bartlett* was whether a conviction for a breach of s 47(1)(*a*) of the Aust RTA should be treated as a conviction for a second or subsequent offence when there had been a previous conviction (within five years) for a breach of s 47(1)(*b*) of the Aust RTA (see *Bartlett* at 89). Bray CJ answered that question in the negative, primarily on the basis that the statute was ambiguous and thus had to be resolved in favour of the citizen (see *Bartlett* at 93–94):

On reflection, … I think that this is a case of a genuine ambiguity in the language. Clearly, as I have said, the offences are separate and distinct. A complaint charging the defendant with driving a vehicle or attempting to put a vehicle in motion whilst so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control would, I think, be bad for duplicity. *The offences being separate and distinct, the use of the expressions "second offence" and "third or subsequent offence" is ambiguous, because Parliament has not made it*

plain whether it means a second, third or subsequent offence of the same kind as the previous offence or whether it means that offences against s. 47(1)(a) *and offences against s. 47(1)*(b) *are to be regarded as equivalent for the purpose of calculating the number of offences.*

...

In *Bower's Case* [[1963] 1 All ER 437], Lord Parker drew a distinction between a provision which is ambiguous and a provision which is difficult to interpret, but *he thought that a true ambiguity in a penal section must be resolved in the manner most favourable to the citizen if doubt still remains after the application of the proper canons of construction … I think there is here a true ambiguity which remains after the application of those canons and I think the principle cited by the Court of Criminal Appeal in the case of* R. v. Chapman *[[1931] 2 KB 606 at 609] from* Maxwell on The Interpretation of Statutes *and applied in that case is applicable also here: 'Where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the Legislature which has failed to explain itself."* Accordingly I hold that the conviction on 8th January, 1969 was not a previous conviction for the present purposes. ...

... It is not for the courts to question the policy which Parliament has thought fit to adopt in enacting legislation of this rigidity, but the case is not one in which any diffidence need be felt in invoking the principle referred to by Lord Hewart CJ in *Chapman's Case*, if that principle is fairly applicable, as I think it is here.

[original emphasis omitted; emphasis added in italics]

50 Another reason for Bray CJ's decision was s 165 of the Aust RTA (see *Bartlett* at 93):

Indeed, there is one consideration in favour of the former construction [referring to the construction eventually decided on]. Section 165 reads as follows:—

> "*In determining whether an offence against a provision of this Act is a second or subsequent offence within the meaning of this Act, a like offence committed against an Act repealed by this Act shall be taken into account as an offence against the said provision."*

I do not think driving under the influence and attempting to put a vehicle in motion while under the influence are now "like offences" or were so under the provisions of s. 48 of the previous legislation, the Road Traffic Act 1934–1960, which was in similar terms for the present purpose to s. 47(1) [of the Aust RTA]. "Like" here must mean not "allied" but "substantially the same" ...

[original emphasis omitted; emphasis added in italics]

I should note here that there is no equivalent provision to s 165 of the Aust RTA in the MLA 2010.

51 Pertinently, our High Court took a contrary view on a similar issue in *Teo Kwee Chuan v Public Prosecutor* [1993] 3 SLR(R) 289 ("*Teo Kwee Chuan*"), which involved drink driving under the same provision as that which was in issue in *Tan Teck Hin*, *viz*, the re-enacted s 67(1) RTA (see above at [38]–[39]). The appellant in *Teo Kwee Chuan* had a previous conviction for "driving under the influence of drink/drugs" (see *Teo Kwee Chuan* at [4]) contrary to s 29(1) of the Road Traffic Act (Cap 92, 1970 Rev Ed, 1973 Reprint). The main issue was whether the appellant should have been treated as a repeat offender *vis-à-vis* his later offence under the re-enacted s 67(1) RTA. However, I note in particular Yong Pung How CJ's views on the issue of whether driving and attempting to drive

under the influence of drink were separate offences such that a prior conviction for one would not count as a prior conviction for the other (see *Teo Kwee Chuan* at [23]):

> … [C]ounsel submitted that driving and attempting to drive were two separate offences so that a conviction for driving whilst under the influence of drink could not be a "second or subsequent offence" if the offender's earlier conviction or convictions were for attempting to drive whilst under the influence of drink, and *vice versa*. *Even leaving aside the manifestly preposterous sense of this submission, it is plain from the drafting of s 67(1)* [*viz*, the re-enacted s 67(1) RTA] *that the words "second or subsequent offence" therein presupposes* [*sic*] *that the relevant earlier offence or offences may be of any description so long as it falls within s 67(1).* [emphasis added]

52 I make three observations regarding *Teo Kwee Chuan*. First, it is not clear why, in the first place, the appellant's counsel raised the issue of whether driving and attempting to drive under the influence of drink were separate offences since it appeared from the charges, as summarised in the judgment, that the appellant's prior and subsequent offences both involved actual drink driving (as opposed to an attempt to engage in the same). Therefore, Yong CJ's holding as set out above is *obiter*. Second, it is not clear whether *Bartlett* was brought to the attention of Yong CJ as it was not referred to in the court's grounds. However, I do not suggest that Yong CJ's views on this issue would have been different had *Bartlett* been cited to him (assuming that it had not). Third, I note that the two offences in issue in *Bartlett* were in two separate statutory limbs (*viz*, ss 47(1)(*a*) and 47(1)(*b*) of the Aust RTA) whereas the two offences in *Teo Kwee Chuan* were not, but I do not think *Bartlett* can be distinguished solely on that basis.

53 In any case, as Australian law has evolved, it is quite possible that *Bartlett* might be decided differently by an Australian court sitting today. Bray CJ decided *Bartlett* on the basis that the particular statutory provision in issue was genuinely ambiguous and "must be resolved in the manner most favourable to the citizen if doubt still remain[ed] *after the application of the proper canons of construction*" [emphasis added] (see *Bartlett* at 94 (also reproduced above at [49])). It is not insignificant that the High Court of Australia has since held that the rule of interpretation applied by Bray CJ in *Bartlett* is one of "last resort" (*per* Gibbs J in *Beckwith v The Queen* (1976) 135 CLR 569 ("*Beckwith*") at 576). More recently, the Full Court of the South Australian Supreme Court has also tried to confine that rule of interpretation to ambiguities as to whether an offence is created or not (*per* Layton J in *Police v Whitehouse* (2005) 92 SASR 81 at [52]):

> *… [T]he rule in relation to the interpretation of penal statutes is predominantly concerned with those statutes where it is unclear because of the ambiguity whether an offence is created or not.* Gibbs J [in *Beckwith* at 577] stated the rule as relating to situations where the statute may extend the category of criminal offences. [emphasis added]

54 Pertinently, Layton J in fact distinguished *Bartlett* on the basis that it concerned the issue of whether or not an offence had been committed, rather than whether a previous conviction could be considered when convicting an offender for committing the same offence (see *Police v Whitehouse* at [55]):

> … *[T]he cases of* Beckwith *and* Bartlett *were concerned with the issue as to whether or not an offence had or had not been committed, therefore one can see why in such a case any ambiguity should be construed in favour of the accused. However, in this situation the question is not whether an offence was committed but rather whether a previous conviction could be taken into account when convicting the respondent for committing the same offence.* In that situation, resolving the ambiguity in favour of the accused would seem to defeat the very

purpose underlying the creation of a specific penalty for a subsequent offence. Therefore that canon of interpretation does not seem to be applicable to the facts in this case and does not lend support to the interpretation found by [the judge in the court below]. [emphasis added]

With respect, I do not think *Bartlett* can be satisfactorily distinguished on the basis stated by Layton J since it did in fact concern whether a previous conviction could be considered when convicting an offender for committing the same offence (see [49] above).

(A) Purposive interpretation as the cornerstone of statutory interpretation

55 In my view, there is no need in the present case to resort (as Bray CJ did in *Bartlett* (see above at [49])) to what I have previously termed the "strict construction rule" (see *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 ("*Low Kok Heng*") at [30]–[31]), *viz*, the rule that ambiguous penal provisions must be construed in favour of the accused person. In *Low Kok Heng*, I considered the strict construction rule against the backdrop of s 9A of the IA in the context of construing penal provisions (see *Low Kok Heng* at [30]–[57]). I concluded that s 9A of the IA mandates that the rule of purposive interpretation trumps all other common law principles of interpretation, including the strict construction rule (see *Low Kok Heng* at [41] and [56]–[57]):

> 41 Section 9A(1) of the [IA] requires the construction of written law to promote the purpose or object underlying the statute. *In fact, it **mandates** that a construction promoting legislative purpose be preferred over one that does not promote such purpose or object*: see Brady Coleman, "The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore" [2000] Sing JLS 152 at 154. *Accordingly, any common law principle of interpretation, such as the plain meaning rule and the strict construction rule, must yield to the purposive interpretation approach stipulated by s 9A(1) of the [IA]. **All*** written law (penal or otherwise) must be interpreted purposively. Other common law principles come into play ***only*** when their application coincides with the purpose underlying the written law in question, or alternatively, when ambiguity in that written law persists even after an attempt at purposive interpretation has been properly made.
>
> ...
>
> 56 That statutorily stipulated principles of interpretation take precedence over the common law rule of strict construction in penal statutes has also been acknowledged by the Supreme Court of Canada in [*R v Hasselwander* [1993] 2 SCR 398] … Cory J stated at 413:
>
> > [T]he rule of strict construction becomes applicable ***only*** when attempts at the neutral interpretation suggested by s 12 of the ***Interpretation Act*** still leave reasonable doubt as to the meaning or scope of the text of the statute. [emphasis added]
>
> *I agree with the Canadian position that the common law rule of strict construction should play second fiddle to principles of interpretation prescribed by statute.* By virtue of its mandatory nature, s 9A(1) of the [IA] must surely take precedence over the rule of strict construction, in the same way that it prevails over any other common law principles of interpretation. *Hence, the operation of the strict construction rule must necessarily be limited to situations where ambiguity persists despite all attempts to interpret a penal provision in accordance with s 9A(1) of the [IA].*
>
> 57 To summarise, s 9A of the [IA] mandates that a purposive approach be adopted in the construction of all statutory provisions, and allows extrinsic material to be referred to, even

where, on a plain reading, the words of a statute are clear and unambiguous. *The purposive approach takes precedence over all other common law principles of interpretation.* ... *Purposive interpretation in accordance with s 9A(1) of the [IA] is the paramount principle of interpretation even with respect to penal statutes; it is only in cases where penal provisions remaining* [*sic*] *ambiguous* ***notwithstanding*** *all attempts at purposive interpretation that the common law strict construction rule may be invoked.*

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

56 The rule of purposive interpretation entails that a statute must be interpreted "in order to promote the underlying purpose behind the legislation" (see *Singapore Parliamentary Debates, Official Report* (26 February 1993) vol 60 at col 517 (*per* Prof S Jayakumar ("Prof Jayakumar"), Minister for Law)). Section 9A of the IA highlights the importance of doing so in the following terms:

9A.—(1) In the interpretation of a provision of a written law, *an interpretation that would promote the purpose or object underlying the written law* (whether that purpose or object is expressly stated in the written law or not) *shall be preferred to an interpretation that would not promote that purpose or object*.

(2) Subject to subsection (4), in the interpretation of a provision of a written law, if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration *may* be given to that material —

(*a*) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; or

(*b*) to *ascertain* the meaning of the provision when —

(i) the provision is ambiguous or obscure; or

(ii) the ordinary meaning conveyed by the text of the provision *taking into account its context in the written law and the purpose or object underlying the written law* leads to a result that is manifestly absurd or unreasonable.

…

[emphasis added]

57 In the present case, I do not think that s 14(1)(*b*)(ii) of the MLA 2010 remains ambiguous after applying the rule of purposive interpretation, notwithstanding Mr Kumar's breezy attempt to import the common law strict construction rule into the context. I turn now to consider the purpose of the legislation criminalising unlicensed moneylending in Singapore.

(B) Legislative history of the offence of unlicensed moneylending

58 The offence of unlicensed moneylending can be traced back to s 8(*b*) of the Moneylenders Ordinance 1959 (No 58 of 1959) ("the MLO 1959"), which came into operation on 11 September 1959. The said provision was substantially similar in structure and language to s 8(1) of the MLA 1985, and read as follows:

8. If any person —

...

(*b*) carries on business as a moneylender without holding a licence or, being licensed as a moneylender, carries on business as such in any name other other than his authorized name or at any place other than his authorized address or addresses;

...

he shall be guilty of an offence under this Ordinance and on conviction shall be liable to a fine not exceeding one thousand dollars and for a second or subsequent offence shall be liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment ...

59 Section 8 of the 1970 revised edition of the Moneylenders Act (*viz*, the Moneylenders Act (Cap 220, 1970 Rev Ed)) retained the structure and language of s 8 of the MLO 1959, but was later amended in 1975 to increase the maximum fines for both first and repeat offenders from $1,000 to $5,000. The then Minister for Social Affairs, Encik Othman bin Wok, explained the rationale behind the increased penalties during the second reading of the Moneylenders (Amendment) Bill 1975 (Bill 24 of 1975) as follows (see *Singapore Parliamentary Debates, Official Report* (29 July 1975) vol 34 at col 1133):

The penalties for illegal moneylending will be heavier under the proposed amendments. Section 8 of the Act will be amended to increase the maximum fine for such offences from $1,000 to $5,000. A second or subsequent offender is liable to imprisonment not exceeding 12 months or a maximum fine of $1,000 or both imprisonment and fine. Under the proposed amendment, the maximum fine will be raised to $5,000. ... *My Ministry takes a serious view of illegal money-lending and will not hesitate to act against any person who is guilty of this offence.* [emphasis added]

60 The next revised edition of our moneylending statute was the MLA 1985. In 1993, the MLA 1985 was amended to provide for minimum fines of $10,000 and $20,000 for first and repeat offenders respectively, and to raise the maximum fines for first and repeat offenders to $100,000 and $200,000 respectively. During the second reading of the Moneylenders (Amendment) Bill 1993 (Bill 16 of 1993), the then Minister for Law, Prof Jayakumar, explained that the purpose of these amendments was to send a strong message that illegal moneylending would not be tolerated (see *Singapore Parliamentary Debates, Official Report* (28 May 1993) vol 61 at cols 294–295):

Sir, this Bill amends the Moneylenders Act [*viz*, the MLA 1985] *to increase the quantum of penalties for illegal moneylending* and unwarranted harassment and intimidation of debtors, to create a new offence in that regard and to give greater powers to the Police under the Act.

...

The number of cases of illegal moneylending reported to the Police has shown a marked increase over the last six years. In 1992 alone, a total of 700 cases were reported which is more than double the number of cases reported in 1987 and more than the total number of cases reported for 1987 and 1988. The figures for 1992 represent an alarming increase of more than 32% from the figures for 1991. The number of harassment cases involving the use of threats and force has also increased, sometimes even inflicting grievous hurt.

Sir, we must act swiftly and decisively in sending a strong message to all illegal moneylenders that such activities will not be tolerated. The Bill seeks to do this by combining substantial increases in the penalties meted out for such activities together with greater powers of investigation and enforcement on the part of the Police.

The existing legislation does not provide for adequate penalties to deter such illegal activities. The amendments will provide for an increase in the fines imposed on illegal moneylenders from the present maximum of $5,000 to fines of between $10,000 and $100,000 for the first-time individual offenders. In the case of repeat offenders, the fines have been increased to between $20,000 and $200,000 from the present maximum fine of $5,000. In addition, such offenders may also be jailed up to a maximum of 12 months.

[emphasis added]

61 In 2005, the MLA 1985 was amended again to double, in respect of first offenders, the maximum imprisonment term (from one year to two years) and the sentencing range for fines (from the range of $10,000 to $100,000 to the range of $20,000 to $200,000, the same as for repeat offenders). For repeat offenders, imprisonment was made mandatory and the maximum imprisonment term was increased from 12 months to five years. This version of the MLA 1985 was in force when the Appellant committed his previous moneylending offences in November 2008 (see the provisions set out above at [22]). When the then Senior Minister of State for Law, Assoc Prof Ho Peng Kee ("Assoc Prof Ho"), proposed the aforesaid amendments at the second reading of the Moneylenders (Amendment) Bill 2005 (Bill 28 of 2005), he observed the increase in unlicensed moneylending cases and reiterated the need to send a strong signal of zero tolerance for unlicensed moneylending activities as follows (see *Singapore Parliamentary Debates, Official Report* (21 November 2005) vol 80 at cols 1831–1834):

Objective of Bill

Sir, this Bill seeks to amend the Moneylenders Act [*viz*, the MLA 1985] by introducing higher penalties to curb the rise in illegal moneylending activities and related harassment cases.

Background

In 1993, we introduced a number of measures to deal with unlicensed moneylending activities. These included:

(1) enhancing penalties for carrying out unlicensed moneylending activities and related harassment cases;

...

Sir, the number of unlicensed moneylending and related harassment cases, however, continues to rise from some 1,500 cases in 1995 to almost 6,000 cases last year, ie, about a four-fold increase . ... In addition, the number of arrests made in unlicensed moneylending and related harassment cases increased by almost 20% in one year, from 330 arrests in 2003 to 393 arrests in 2004.

...

The proposed amendments

Sir, as for these amendments which are under consideration, Parliament should send a strong signal to loansharks that we will not tolerate the conduct of unlicensed moneylending activities , where exorbitant interest rates are charged and borrowers and even non-borrowers are harassed in their own homes.

Therefore, this Bill seeks to increase the penalties for unlicensed moneylending under the Moneylenders Act as follows:

First, the existing fines for offenders who carry out unlicensed moneylending activities or harassment cases will be doubled *;*

...

Fourthly, repeat offenders of illegal moneylending will be subject to mandatory imprisonment , whilst repeat offenders of harassment where hurt to person or damage to property is caused will be subject to mandatory caning.

…

Conclusion

In conclusion, Sir, these amendments are needed to send a strong signal that the Government has zero tolerance for unlicensed moneylending activities . The enhanced deterrent effect should also help stem the increase that we have seen in such activities.

…

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

62 Next, as stated above at [2], the MLA 1985 was repealed and re-enacted as the MLA 2008. This was undertaken pursuant to comprehensive changes made to the MLA 1985 following a holistic review of that Act, which, at the time, was considered to have become outdated (see the speech by the then Senior Minister of State for Law, Assoc Prof Ho, during the second reading of the Moneylenders Bill 2008 (Bill 33 of 2008) in *Singapore Parliamentary Debates, Official Report* (18 November 2008) vol 85 at cols 1001–1007; see also my observations in *City Hardware Pte Ltd v Kenrich Electronics Pte Ltd* [2005] 1 SLR(R) 733 at [47]–[50]).

63 Significantly, the moneylending offences under s 8(1) of the MLA 1985 (under the heading "Offences") were later split between ss 14 and 15 of the MLA 2008 (under the respective headings "Unlicensed moneylending" and "Other offences under this Part"). Further, while s 8(1) of the MLA 1985 provided for both the offence of unlicensed moneylending (via, specifically, s 8(1)(*b*) of the MLA 1985) as well as its punishment under a single subsection (*viz*, s 8(1) of the MLA 1985), the MLA 2008 did not. Rather, the MLA 2008 prohibited unlicensed moneylending via s 5(1), and separately provided that the contravention or the assistance in the contravention of s 5(1) was an offence and was punishable under s 14(1).

64 Pertinently, s 14(1) of the MLA 2008 expressly made it an offence to assist in carrying on the business of unlicensed moneylending (see s 14(1) read with s 5(1) of the MLA 2008). In contrast, prior to the enactment of the MLA 2008, s 8(1)(*b*) of the MLA 1985 only provided for the principal offence of unlicensed moneylending. Under the statutory regime set out in the MLA 1985, if a person assisted in the principal offence of unlicensed moneylending, he would have been charged (as the

Appellant was in 2008) with the abetment (by intentional aiding) of unlicensed moneylending under s 8(1)(*b*) of the MLA 1985 (read with s 109 of the 1985 revised edition of the Penal Code).

65 Despite the significant changes introduced in the MLA 2008, the penalties for first and repeat offenders in respect of unlicensed moneylending remained the same as before. However, in 2010, the MLA 2008 was amended to increase the penalties dramatically. Both the punishment of fine and that of imprisonment were made mandatory for first as well as repeat offenders. The sentencing range for fines for both first and repeat offenders was increased to between $30,000 and $300,000 (*cf* the previous range of between $20,000 and $200,000). The maximum imprisonment term for first offenders was doubled from two to four years, while the maximum imprisonment term for repeat offenders was increased from five to seven years. Most significantly, caning was introduced as a sentencing option, capped at six strokes for first offenders and 12 strokes for repeat offenders.

66 During the second reading of the Moneylenders (Amendment) Bill 2009 (Bill 23 of 2009) ("the Moneylenders Bill 2009"), the then Senior Minister of State for Law, Assoc Prof Ho, explained the tougher penalties and reiterated the need to send a strong message of zero tolerance for all unlicensed moneylending activities as follows (see *Singapore Parliamentary Debates, Official Report* (12 January 2010) vol 86 ("*Singapore Parliamentary Debates* vol 86") at cols 2051 and 2060–2061):

> Sir, last year in August, I informed this House that MHA [the Ministry of Home Affairs] was studying how to tackle this loanshark scourge more effectively. Setting out the various measures already in place, I said that we would tighten our laws to plug the gaps. Sir, this Bill is a result of our review. ... ***It also introduces new measures to strengthen the existing legal regime. These include enhancing existing penalties and, specifically, criminalising acts that contribute to or advance loanshark activities in Singapore***. …
>
> ...
>
> *Tougher penalties*
>
> Sir, it does not appear that syndicate members and their runners are deterred by the current penalties. ***Hence, we will enhance our punishments to send a strong message of zero tolerance for all loansharking activities. ... Loansharks who are first-time offenders will be punished with a fine and an imprisonment term which are now made mandatory, as well as caning as an additional sentencing option. Repeat offenders will be subjected to even tougher penalties. These enhanced penalties aim to deter those who are tempted by the profitability of loansharking businesses and, hopefully, also make our youths and debtors think twice before succumbing to the easy way out offered by loansharks***. This deterrent message forms an integral part of the overall solution in tackling the loanshark scourge.
>
> [emphasis in italics in original; emphasis added in bold italics]

The MLA 2008 (as amended in 2010) was later revised to become the MLA 2010, which preserved the penalties discussed above.

67 The purpose of moneylending legislation was also explicated in the Court of Appeal case of *Donald McArthy Trading Pte Ltd and others v Pankaj s/o Dhirajlal (trading as TopBottom Impex)* [2007] 2 SLR(R) 321, where Chan Sek Keong CJ explained that the primary objective of the MLA 1985 was to protect poor individuals from unscrupulous unlicensed moneylenders (at [6]):

> ***Purpose of the MLA*** [referring to the MLA 1985]

6 Before giving our reasons for our decision on the preliminary issues, it would be useful to restate the legislative purpose of the MLA and the relevant principles that have been established by case law on the scope of the MLA. It is trite that a court should give effect to the legislative purpose when interpreting an Act of Parliament. ***From the transcripts of parliamentary debates on the enactment and subsequent amendments of the MLA, it is clear that Parliament intended the MLA to be a social legislation designed to protect individuals who, being unable to borrow money from banks and other financial institutions, have to turn to unscrupulous unlicensed moneylenders who prey on people like them.*** For example, in *Singapore Parliamentary Debates, Official Report* (2 September 1959) vol 11 at col 593, Mrs Seow Peck Leng made the following remarks:

> This Bill [referring to the Bill which was later enacted as the MLO 1959] is laudable for the fact that it protects the poor from the clutches of unscrupulous moneylenders. This Bill, in my opinion, should be implemented as soon as possible to ease the hardship of those already victimised and to prevent those who, because of financial difficulties, may be victimised in the future ...
>
> *It is the very, very poor, Sir, who need protection most, who usually take loans of less than $100, and I think that they are the ones who should be protected* ...
>
> [emphasis added]

These expressions of legislative purpose have been reiterated whenever the MLA has come up for amendment in Parliament. For example, in *Singapore Parliamentary Debates, Official Report* (28 May 1993) vol 61 at col 294, Prof S Jayakumar (the Minister for Law) said:

> Sir, this Bill amends the Moneylenders Act to increase the quantum of penalties for illegal moneylending ...
>
> Members, I am sure, would have read numerous accounts in the press of illegal moneylenders or loansharks resorting to the use of threats and violence in extracting payment from debtors for loans given. These loans were often at exorbitant rates of interest. *They prey on debtors who, having no access to the usual channels of raising finance, had no recourse except to look to those loansharks for their funds*.

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

I have no doubt that this salutary social objective survived the repeal of the MLA 1985, and applies both to its re-enactment in the form of the MLA 2008 and the revision of the MLA 2008 to, in turn, the MLA 2010.

68 As can be seen from the markedly robust increases in the penalties for moneylending offences over the years as outlined at [58]–[66] above, the rising scourge of unlicensed moneylending has repeatedly prompted Parliament to toughen its stance against this particular criminal activity over the years. Plainly, Parliament has set its face implacably against this pernicious malaise.

(C) The offences of carrying on the business of unlicensed moneylending and assisting in the same under s 14(1) of the MLA 2010 are the same in the context of s 14(1)(*b*)(ii) of the MLA 2010

69 Taking into account the unambiguous statutory genesis of the MLA, I return to the issue set out at the beginning of this section (see [46] above), *viz*, whether carrying on the business of

unlicensed moneylending and assisting in the same (respectively, contravening and assisting in the contravention of s 5(1) of the MLA 2010) are indeed two separate offences such that a prior conviction for one would not count as a prior conviction for the other. I begin by noting that in *Bartlett* (religiously cited by Mr Kumar), Bray CJ had in fact repressed misgivings about his eventual decision that a previous conviction for a breach of s 47(1)(*b*) of the Aust RTA did not count for the purposes of determining whether a later conviction for a breach of s 47(1)(*a*) of that Act amounted to a second or subsequent offence (see *Bartlett* at 93):

> … There may, perhaps, be *some element of caprice* as a result of the learned Special Magistrate's construction [which Bray CJ went on to uphold]. *I assume for the present purposes that attempting to put a vehicle in motion under the influence is a lesser offence than driving it under the influence. Nevertheless, it might seem odd if a gaol sentence is mandatory on the second of two convictions for attempting to put the vehicle in motion under the influence and yet not for a conviction for driving under the influence after a conviction for attempting to put a vehicle in motion under the influence* …
>
> On reflection, however, I think that this is a case of genuine ambiguity in the language. ...
>
> [original emphasis omitted; emphasis added in italics]

70 In the present context, I think it is quite clear that assisting in the carrying on of the business of unlicensed moneylending is a lesser offence than actually carrying on the business of unlicensed moneylending. That said, if carrying on the business of unlicensed moneylending does not count as a prior conviction for assistance of the same and *vice versa*, then the second of two convictions for assisting in unlicensed moneylending would be punishable with a higher maximum imprisonment sentence (of seven years, as opposed to four years for a first offender) than in the case of:

> (a) a conviction for assisting in unlicensed moneylending after a conviction for actually carrying on unlicensed moneylending; and
>
> (b) a conviction for actually carrying on unlicensed moneylending after a conviction for assisting in unlicensed moneylending.

71 Surely, the repeat offender who is convicted of the principal offence of carrying on the business of unlicensed moneylending, regardless of whether his earlier conviction was for that same principal offence or for assisting in carrying on an unlicensed moneylending business, is more deserving of the maximum sentence of seven years' imprisonment than the repeat offender who has never gone beyond assisting in carrying on the business of unlicensed moneylending to actually carrying on such business himself or herself. In my view, if s 14(1) of the MLA 2010 is construed such that the offences of carrying on the business of unlicensed moneylending and assisting in the carrying on of such business are not regarded as the same in the context of s 14(1)(*b*)(ii), this would not merely "seem odd" (see *Bartlett* at 93). It would in fact be "manifestly … unreasonable" within the meaning of s 9A(2)(*b*)(ii) of the IA (see above at [56]).

72 I also note that during the second reading of the Moneylenders Bill 2009, the then Senior Minister of State for Law, Assoc Prof Ho, emphasised that anyone who contributed to an unlicensed moneylending operation would also face the law's wrath and that even assistants would be liable to the same penalties (see *Singapore Parliamentary Debates* vol 86 at col 2059):

> *In order to target the many layers forming the organisation, anyone who contributes to or facilitates a loansharking operation, no matter what his role is, will not escape the wrath of the*

> *law.* This will help us disrupt the syndicates. The Bill therefore amends section 14 [referring to the MLA 2008 as it originally stood] (which is on unlicensed moneylending) and section 28 (on harassing borrowers besetting his residence) to treat certain acts as assistance of unlicensed moneylending and abetment of the harassment offence, respectively. These acts include, for example, selling pre-paid SIM cards to loansharks, transporting runners to harassment targets, acting as a lookout for harassment runs and assisting the loansharks in verifying harassment jobs before paying the runners. Indeed, a 27-year old ex-runner said that he was paid $10 for every address that he verified that harassment had been conducted. Sir, these acts are specifically chosen as they reflect the current *modus operandi* adopted in loanshark harassments. *Persons carrying out these acts are deemed to have assisted or abetted loansharking offences and will be liable to the same penalties.* [emphasis added]

The last sentence in the above quote is particularly noteworthy. Those who have a secondary role in unlicensed moneylending activities are deemed to have "assisted or abetted" the same (see *Singapore Parliamentary Debates* vol 86 at col 2059) and are liable to "the same penalties" as the principal offenders (see likewise *Singapore Parliamentary Debates* vol 86 at col 2059). Such "assisting" conduct should be viewed through exactly the same lenses, at least in the context of s 14(1)(*b*)(ii) of the MLA 2010, rather than be semantically micro-analysed as being conceptually different.

73 For the reasons outlined above, I consider that Parliament's intention is not to distinguish principal offenders from assistant offenders when it comes to determining whether one is a repeat offender *vis-à-vis* the offence of unlicensed moneylending. Therefore, I interpret s 14(1)(*b*)(ii) of the MLA 2010 to mean that regardless of whether an offender was previously convicted of actually carrying on the business of unlicensed moneylending or merely assisting in the same under s 14(1) of the MLA 2010, he is to be considered a second or subsequent offender for the purposes of s 14(1)*(b*)(ii) of the MLA 2010 upon his next conviction for either actually carrying on the business of unlicensed moneylending or merely assisting in the same. In other words, the offences of carrying on the business of unlicensed moneylending and assisting in the carrying on of such business under s 14(1) of the MLA 2010 should be treated as the same in the context of s 14(1)(*b*)(ii) of the MLA 2010.

(3) Whether the moneylending offences under s 8(1)(*b*) of the MLA 1985 are the same as the offences described by s 14(1) of the MLA 2010

74 I have held above (at [73]) that the offences of carrying on the business of unlicensed moneylending and assisting in the carrying on of such business under s 14(1) of the MLA 2010 should be treated as the same in the context of s 14(1)(*b*)(ii) of the MLA 2010 for the purposes of determining whether a later offence is a "second or subsequent offence". Extending the reasoning (see above at [47]) that a subsequent offence can only be considered a repeat offence if it is the same as the prior offence, unlicensed moneylending offences under s 8(1)(*b*) of the MLA 1985 may be prior offences for the purposes of s 14(1)(*b*)(ii) of the MLA 2010 only if they are the same as either of the two above-mentioned offences under s 14(1) of the MLA 2010.

(A) Different penalties for first offenders

75 As stated above at [27], Mr Kumar repeatedly pointed out that the offence of unlicensed moneylending under s 8(1)(*b*) of the MLA 1985 was different from that under s 14(1) of the MLA 2010 because the punishment for a first offender under s 14(1)(*b*)(i) of the MLA 2010 was heavier than the corresponding punishment under s 8(1)(i) of the MLA 1985.

76 Mr Kumar's submission in this regard was based on the argument that the Court of Appeal in *Tan Teck Hin* (see above at [38]–[39]) had in fact misapplied the Canadian authority of *Campbell v*

The King (1949) 95 CCC 63 ("*Campbell*"). In coming to its decision in *Tan Teck Hin*, the Court of Appeal had adopted the decision in *Campbell*. In particular, the Court of Appeal held in *Tan Teck Hin* at [39]–[41]:

> 3 9 *Re Green* [[1936] 2 DLR 153] was followed by the Prince Edward Island Supreme Court in the case of *Campbell* … In that case, the appellant was convicted on a charge of possession of spirits in violation of a section of the Excise Act [*viz*, the Excise Act 1934, c 52 (Can)]. He was sentenced, as for second offence, to the minimum penalty of six months' imprisonment and a fine and costs. He contended that the imposition of a second offence penalty was invalid on the ground that his previous offence was under the same section of the Act before it was amended. As in the instant case, the amendment in that case was also to enhance the penalty for the same offence. *The appellant contended that the punishment for a second or subsequent offence under the re-enactment could not be imposed unless the previous offence was also under the re-enactment.*
>
> 4 0 *Campbell CJ referred to the decision of Chisholm CJ in* Re Green *… and held that the previous conviction under the enactment before its amendment could properly be taken into account for the purpose of deciding whether the appellant should be subject to punishment as for a second offence.*
>
> 41 *We would adopt the decision of these learned judges in these two Canadian cases in which a similar point arose for decision.* We have no doubt at all that the previous conviction of the respondent in this case under s 67(1) of the Act [*ie*, the repealed s 67(1) RTA] should be taken into consideration in deciding whether the proper punishment in his case should be as for a second or subsequent offence. We hold that the punishment in this case should have been as for a second offence.
>
> [emphasis added]

77 Mr Kumar submitted that the Court of Appeal might have decided *Tan Teck Hin* differently if the following paragraph from *Campbell* had been brought to its attention [note: 31] (see *Campbell* at 65–66):

> Sections 164 and 169 of the Excise Act [*viz*, the Excise Act 1934, c 52 (Can)] can be readily analyzed into three essential components: (a) The ingredients of the offence; (b) *the punishment for first offence;* (c) the punishment for second offence or subsequent offence. *So far as (a) and (b) are concerned the re-enactment of 1948 leaves the law precisely the same as it previously was.* The sole purpose of the repeal and re-enactment was to make it clear th[at] (c) both fine and imprisonment with hard labour must be imposed in the first instance on a second or subsequent offender. *So far, therefore, as the nature of the offence and the punishment for a first offence are concerned, the repeal and re-enactment must be construed as an affirmation and continuance of the former law, or as Lord Esher said* [in *Ex p Todd, Re Ashcroft* (1887) 19 QBD 186 at 195]*, so far as the re-enactment is a repetition of the repealed section, it must apply to transactions which took place before the commencement of the new Act.* [original emphasis omitted; emphasis added in italics]

Therefore, Mr Kumar argued that for *Campbell* to apply, the punishment for a first offender under the new Act had to be the same as the corresponding punishment under the old Act. The corollary of this argument is that *Tan Teck Hin* was wrongly decided since the re-enacted s 67(1) RTA provided for more severe penalties for first offenders than the repealed s 67(1) RTA (see below at [89]–[90]).

78 I did not accept Mr Kumar's argument. First, it is not clear that *Campbell* itself would have been decided differently if the punishment for a first offence had been increased after the Excise Act 1934, c 52 (Can) was repealed and re-enacted. Indeed, the paragraph which preceded the passage quoted by Mr Kumar (see above at [77]) read as follows (see *Campbell* at 65):

> The principle so enunciated by the Supreme Court of Canada [in *Trans-Canada Ins Co v Winter* [1935] 1 DLR 272] and by the Court of Appeal of England [in *Ex p Todd, Re Ashcroft* (1887) 19 QBD 186], is admirably stated in a reference to United States cases made by Chisholm C.J. of the Supreme Court of Nova Scotia, in *Re Green*, 65 Can. C.C. 353 at p. 355, [1936] 2 D.L.R. 153 at p. 155, 10 M.P.R. 335 at pp. 338–9: "That the repeal and simultaneous re-enactment of *substantially the same statutory provisions* must be construed, not as an implied repeal of the original statute, but as an affirmance and continuance of the statute in uninterrupted operation." [emphasis added]

To my mind, the phrase "substantially the same statutory provisions" in the aforesaid principle considered in *Campbell* does not require the penalties for first offenders under the old Act to be exactly the same as the corresponding penalties under the new Act in order for offences under the old Act to be considered as prior offences for the purposes of the new Act.

79 Further, I do not think that *Tan Teck Hin* would have been decided differently even if the passage from *Campbell* reproduced at [77] above had been drawn to the Court of Appeal's attention (and here, I am only assuming that that had in fact not been done). *Tan Teck Hin* was decided by construing the re-enacted s 67(1) RTA in accordance with Parliament's intention (see *Tan Teck Hin* at [34]–[35]):

> 34 What is before us is simply whether a conviction under s 67(1) before its "repeal" [*ie*, a conviction under the repealed s 67(1) RTA] can properly be taken into account when applying the subsection after its "repeal" [*ie*, when applying the re-enacted s 67(1) RTA]. The issue is one of construction, of ascertaining the intention of Parliament when enacting the new provision.
>
> 35 We have no doubt at all that what Parliament intended to do was simply to enhance the punishment for persons found guilty of driving while under the influence of alcohol [or] drugs. The offence dealt with by the amended subsection [*viz*, the re-enacted s 67(1) RTA] is the same as that under the old subsection [*viz*, the repealed s 67(1) RTA]. *What was changed was the punishment prescribed for persons convicted of the offence. The Legislature was particularly intent on dealing severely with repeat offenders.* Rather than prescribing a maximum fine and imprisonment term and leaving it to the courts to impose an appropriate punishment up to the maximum, Parliament prescribed the minimum as well. *This indicates beyond doubt an intention to see that such criminal conduct is treated with the required degree of seriousness by the courts.* If the argument for the respondent [*viz*, that his previous conviction under the repealed s 67(1) RTA did not count as a prior offence for the purposes of the re-enacted s 67(1) RTA] is correct, it would lead to the absurd result that a person no matter how many times he has been convicted in the past under the old subsection would be treated as a first offender if he is convicted for the first time under the new subsection. This would obviously defeat the intention of the Legislature.
>
> [emphasis added]

80 As seen above, the Court of Appeal in *Tan Teck Hin* observed (at [7]) that after the repeal and re-enactment of s 67(1) of the RTA, first offenders became subject to a minimum fine. It noted in the same paragraph that the penalty had become "drastically enhanced" for repeat offenders. Considering

the changes in the punishment for persons convicted under s 67(1) of the RTA, the Court of Appeal had no doubt that Parliament intended to enhance the punishment for persons found guilty of driving while under the influence of alcohol or drugs (see [79] above). Of central relevance in *Tan Teck Hin* was Parliament's intention to see that repeat drink drivers were "treated with the required degree of seriousness by the courts" (see *Tan Teck Hin* at [35]). This was entirely consistent with the raising of penalties for (*inter alia*) first offenders. Therefore, I do not think that the Court of Appeal's decision in *Tan Teck Hin* would have turned on whether the penalties for first offenders under the re-enacted s 67(1) RTA had been made more severe than the corresponding penalties under the repealed s 67(1) RTA.

81 Returning to *Campbell*, I note that the Supreme Court of Canada has in fact approved the application of *Campbell* in a situation where the new legislation in question provided for increased penalties for a first offender as well. In the Northwest Territories Court of Appeal case of *Regina v Johnston* [1977] 2 WWR 613 ("*Johnston*"), the offender was convicted of impaired driving under s 236(1) of the Criminal Code, RSC 1970, c C-34 (Can) as re-enacted by the Criminal Law Amendment Act 1974-75-76, c 93 (Can). He had previously been convicted under a previous version of the same section, which read as follows (see *Johnston* at 614):

> 236. Every one who drives a motor vehicle or has the care or control of a motor vehicle, whether it is in motion or not, having consumed alcohol in such a quantity that the proportion thereof in his blood exceeds 80 milligrams of alcohol in 100 millilitres of blood, is guilty of an offence punishable on summary conviction *and is liable to a fine of not less than fifty dollars and not more than one thousand dollars or to imprisonment for not more than six months, or both.* [emphasis added]

In between the offender's first and second convictions, that section was repealed and substituted with the following (see *Johnston* at 614):

> 236. (1) Every one who drives a motor vehicle or has the care or control of a motor vehicle, whether it is in motion or not, having consumed alcohol in such a quantity that the proportion thereof in his blood exceeds 80 milligrams of alcohol in 100 millilitres of blood, is guilty of an indictable offence or an offence punishable on summary conviction and is liable
>
> > (*a*) for a first offence, to a fine of not more than two thousand dollars and not less than fifty dollars or to imprisonment for six months or to both;
> >
> > (*b*) *for a second offence, to imprisonment for not more than one year and not less than fourteen days;* and
> >
> > (*c*) for each subsequent offence, to imprisonment for not more than two years and not less than three months ...
>
> 236.1. Where a person who is guilty of an offence under section 234, 234.1, 235 or 236 has previously been convicted of an offence under any of those sections, that conviction or those convictions shall be deemed to be, for the purpose of determining the punishment to which the person is subject under any of those sections, a first or second offence, as the case may be.
>
> [emphasis added]

82 The Northwest Territories Court of Appeal held that the judge in the court below had applied *Campbell* correctly (see *Johnston* at 618–619 *per* Clement JA, delivering the judgment of the court):

> I take the same view of the conviction of [the offender] in 1975. It was in no way affected by the subsequent substitution of s. 236. It remains as an unaltered fact. Nothing has been added to or taken away from that offence or its penalty. Putting aside the doctrine of retrospectivity as an element in the construction of the substituted section, *there is much support for the opinion of Tallis J.* [*viz*, the judge in the court below] *that on the proper construction of s. 236(1)(*b*) the earlier offence of 1975 invokes its operation.* He himself relied on the judgment of Spence J. (then of the High Court of Ontario) in *Regina v. Lelievre*, [1956] O.W.N. 198, 115 C.C.C. 404, and on the judgment of Campbell C.J. in *Campbell* … In the latter case Campbell C.J. relied, amongst other authority, upon the canon of construction stated in *Re Green; Re Jamel*, 10 M.P.R. 335 at 338, 65 C.C.C. 353, [1936] 2 D.L.R. 153 (C.A.):
>
> > "*That the repeal and simultaneous re-enactment of substantially the same statutory provisions must be construed, not as an implied repeal of the or[i]ginal statute, but as an affirmation and continuance of the statute in uninterrupted operation.*"
>
> [emphasis added]

Notably, the quotation from *Re Green* [1936] 2 DLR 153 cited at 618–619 of *Johnston* was the same as that cited with approval by our Court of Appeal in *Tan Teck Hin* (at [38]).

83 Most significantly, the Northwest Territories Court of Appeal also dismissed the same argument that Mr Kumar made in the present appeal, *viz*, that the offences in the old and the new versions of the statutory provision in question were different because the new version provided for more severe penalties for first offenders. In *Johnston*, the Northwest Territories Court of Appeal held (at 620):

> It is urged that the provisions in the substituted section that an accused may be charged either on indictment or with an offence punishable on summary conviction with liability to more severe penalties on a first offence sufficiently separate it from the old section. I do not think so. The offence is the same. Parliament has stated that for the future the commission of the same offence must be dealt with more rigorously in the public interest.

84 The appeal against the Northwest Territories Court of Appeal's decision in *Johnston* was summarily dismissed by the Supreme Court of Canada, which delivered a brief oral judgment stating its unanimous approval of the Northwest Territories Court of Appeal's conclusion for the reasons that it gave (see *Johnston v The Queen* [1978] 2 WWR 478).

85 Finally, I also note that the fact that the new version of a statute increased the penalty for a first offender did not trouble the English Court of Criminal Appeal in a similar case. In *The King v Frederick Austin* [1913] 1 KB 551 ("*Austin*"), the offender was convicted of living on the earnings of prostitution and was deemed a rogue and vagabond within the meaning of the Vagrancy Act 1898 (c 39) (UK). He had three previous convictions for similar offences. In between his previous convictions and the conviction which was in issue in *Austin*, the Criminal Law Amendment Act 1912 (c 20) (UK) was passed to increase the penalty for a first offender from a maximum of three months' imprisonment to a maximum of six months' imprisonment with hard labour. In addition, the same amendment Act provided that on conviction on indictment for a subsequent offence, an offender could be whipped in addition to being imprisoned. Phillimore J held that in order to justify a sentence of whipping, it was not necessary that an offender should have had a previous conviction since the enactment of the amendment Act; neither was it necessary for the offender's previous conviction to have been on indictment (see *Austin* at 555).

86 Having carefully considered *Tan Teck Hin* as well as the cases of *Campbell*, *Johnston* and *Austin*

discussed above, I could not accept Mr Kumar's argument that the offence of unlicensed moneylending under s 8(1)(*b*) of the MLA 1985 was different from that under s 14(1) of the MLA 2010 because the punishment for a first offender under s 14(1)(*b*)(i) of the MLA 2010 was heftier than the corresponding punishment under s 8(1)(i) of the MLA 1985.

87 For completeness, I also deal with Mr Kumar's related argument that it was simply not fair to punish the Appellant as a repeat offender under the MLA 2010 when the punishment for a first offender under the MLA 2010 was already stiffer than that provided for in the MLA 1985 (see above at [27]). With respect, I did not see the logic of this argument. That the punishment for a first offender was stiffer under the MLA 2010 was irrelevant to the Appellant if he were correctly considered to be a repeat offender under the MLA 2010, which was the preliminary issue at hand in this appeal. As for Mr Kumar's suggestion that the court could impose a slightly higher punishment on account of the Appellant's prior convictions under the MLA 1985 even if it were to treat him as a first offender under the MLA 2010 (see above at [27]), this would neither be proper nor necessary if the Appellant were rightly identified as a second or subsequent offender under the MLA 2010.

(B) Different wording and structure

88 The offence of unlicensed moneylending is set out differently under the MLA 2010 as compared to under the MLA 1985. This is primarily due to the changes introduced when the MLA 1985 was repealed and re-enacted as the MLA 2008 (see above at [63]). While s 8(1) of the MLA 1985 provided for both the offence of unlicensed moneylending and the punishment for it, the MLA 2008 prohibited unlicensed moneylending under s 5(1), and separately provided that the contravention or the assistance in the contravention of s 5(1) was an offence and was punishable under s 14(1). The MLA 2010, which the Appellant's present offences fall under, proscribes unlicensed moneylending in much the same way as the MLA 2008, save that the existing penalties have been enhanced and the additional punishment of caning has been made available under s 14(1A) of the MLA 2010 (see above at [65]).

89 As the offence of unlicensed moneylending is now set out differently under the MLA 2010, this case is a first of sorts. In the previous cases dealing with the point of law raised by the preliminary issue presently under consideration, the new version of the statute in question had largely (if not entirely) preserved the way in which the offence was set out in the previous version of the statute. For example, in *Tan Teck Hin*, the repealed s 67(1) RTA read as follows (see *Tan Teck Hin* at [3]):

> *Any person who, when driving or attempting to drive a motor vehicle on a road or other public place, is under the influence of drink or of a drug to such an extent as to be incapable of having proper control of such vehicle, shall be guilty of an offence* and shall be liable on conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 6 months, and in the case of a second or subsequent conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 12 months or to both. [original emphasis omitted; emphasis added in italics]

90 The re-enacted s 67(1) RTA read as follows (see *Tan Teck Hin* at [4]):

> *Any person who, when driving or attempting to drive a motor vehicle on a road or other public place, is under the influence of drink or of a drug to such an extent as to be incapable of having proper control of such vehicle shall be guilty of an offence* and shall be liable on conviction to a fine of not less than $1,000 and not more than $5,000 or to imprisonment for a term not exceeding 6 months and, in the case of a second or subsequent conviction, to a fine of not less than $3,000 and not more than $10,000 and to imprisonment for a term not exceeding 12 months. [emphasis added]

As can be seen, although the re-enacted s 67(1) RTA provided for more severe punishment for both first and repeat offenders, that part of the re-enacted s 67(1) RTA which set out the offence was exactly the same as the corresponding part of the repealed s 67(1) RTA.

91 This was the same situation as that in *Public Prosecutor v Mohd Yusoff bin Jalil* [1994] 3 SLR(R) 895 ("*Jalil*"), where s 8(*a*) of the Misuse of Drugs Act (Cap 185, 1985 Rev Ed) ("the MDA 1985") entirely preserved the wording of the offence of possession under s 6(*a*) of the Misuse of Drugs Act 1973 (Act 5 of 1973) ("the MDA 1973"), but provided for stricter punishment for second and subsequent offenders. Yong CJ held that the respondent's conviction in 1980 under s 6(*a*) of the MDA 1973 subsisted as a "*previous conviction*" [emphasis in original] (see *Jalil* at [3]) for the same offence that later became the offence under s 8(*a*) of the MDA 1985.

92 In contrast, in the case of *Public Prosecutor v Chen Chih Sheng and another appeal* [1999] 1 SLR(R) 182 ("*Chen Chih Sheng*"), there was a substantive change in the wording providing for the offence in question. This case is particularly instructive. There, a restaurant's employment of a foreign worker without having obtained a valid work permit was attributable to the default of the offender, who was the managing director of the restaurant. Such employment was an offence under the Employment of Foreign Workers Act (Cap 91A, 1991 Rev Ed) as amended by the Employment of Foreign Workers (Amendment) Act 1995 (Act 37 of 1995) ("the amended EFWA 1991"). The offender had a previous conviction pursuant to similar provisions in the pre-amended version of the same Act ("the original EFWA 1991"). The Prosecution submitted that the offender's conviction under the original EFWA 1991 meant that his conviction under the amended EFWA 1991 was a second conviction for the purposes of the latter Act. Therefore, the Prosecution argued, the offender was subject to mandatory imprisonment.

93 In coming to his decision, Yong CJ compared a series of matching provisions in the original EFWA 1991 and the amended EFWA 1991. To illustrate my point, I need only discuss his comparison of s 5(6) of the original EFWA 1991 and s 16D of the amended EFWA 1991. Both provisions provided that an officer of a company would be guilty of the offence of employing a foreign worker without a valid work permit if the same offence, as committed by his company, was proved to be attributable to him. Section 5(6) of the original EFWA 1991 read as follows:

> When any offence under subsection (1) [*viz*, the offence of employing a foreign worker without a valid work permit] committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to *any neglect* on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly. [emphasis added]

Section 16D of the amended EFWA 1991 read:

> Where an offence under this Act or any regulations made thereunder is committed by a body corporate, and it is proved to have been committed with the consent or connivance of, or to be attributable to *any act or default* on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly. [emphasis added]

94 In respect of the aforesaid provisions, Yong CJ held (see *Chen Chih Sheng* at [46]):

> 46 Having perused the relevant sections of the 1991 as well as the 1995 Act [*viz*, the original

EFWA 1991 and the amended EFWA 1991 respectively], I agreed with the submissions of the DPP. The only difference between the 1991 and the 1995 Acts is that the 1995 Act has incorporated into it the amendments made to the 1991 Act by the Employment of Foreign Workers (Amendment) Act (Act 37 of 1995). *So far as the offence in the instant case is concerned, its definition has remained the same save for the following changes*:

> (a) *In the 1991 Act, the offence of employing a worker without a valid work permit by the body corporate must be attributable to the neglect of the accused. In the 1995 Act, the offence by the body corporate must be attributable to the act or default of the accused.* I do not propose to go into an exhaustive or in-depth examination of the term "default" in the context of the 1995 Act. Suffice it to say that in interpreting the term, it is useful to keep in mind the natural and ordinary meaning of the word "default" as a working guide, albeit with the qualification that this is not exhaustive. For present purposes, it suffices to note that one of the meanings of default as defined in the Oxford English Dictionary is: "Failure to act; neglect".
>
> *It is clear therefore that the phrase "act or default" is wider than and includes the term "neglect".*
>
> …

[emphasis added]

95 Having dealt with and compared the other matching provisions of the original EFWA 1991 and the amended EFWA 1991, Yong CJ concluded as follows (see *Chen Chih Sheng* at [47]):

> It was clear from the above comparison that the sole effect of the amendments to the offence in question between 1991 and 1995 was to broaden the ambit of the offence. *In other words, the same facts which would support a conviction under s 5(6) read with s 5(1) and punishable under s 5(4) of the 1991 Act* [*viz*, the original EFWA 1991] *would also sustain a conviction under s 16D read with s 5(1) and punishable under s 5(4) of the 1995 Act* [*viz*, the amended EFWA 1991]. As such, I did not see why the accused's conviction under s 5(6) read with s 5(1) and punishable under s 5(4) of the 1991 Act should not count as a previous conviction under the 1995 Act, so as to make the accused's current conviction under s 16D read with s 5(1) and punishable under s 5(4) of the 1995 Act a second conviction which would attract the sentence of mandatory imprisonment under s 5(4)(*b*)(i) of the 1995 Act. Clearly, the intention of Parliament in re-enacting s 5(4)(*b*)(i) of the 1995 Act was to ensure stricter punishment for individuals who repeatedly committed the offence in question, and it would be an absurd denial of Parliament's intention if in considering whether the accused's current conviction was a second conviction, the courts were to ignore his past conviction on the mere basis that … he had been convicted under an earlier edition of the Act which defined the offence in question more narrowly than the 1995 Act. I therefore allowed the Prosecution's appeal against sentence. [emphasis added]

96 In my view, *Chen Chih Sheng* is sound authority for the proposition that the test for whether an offence provided for under the previous version of a statutory provision is *the same* as the offence provided for under the new version of that statutory provision is whether the same facts which would support a conviction under the previous version would also sustain a conviction under the new version. In short, only the ingredients of the offence need be the same.

97 In the present case, it is clear that the facts supporting a conviction for carrying on the business of unlicensed moneylending under s 8(1)(*b*) of the MLA 1985 would also support a conviction

for carrying on the business of unlicensed moneylending in contravention of s 5(1) of the MLA 2010, which is an offence under s 14(1) of the MLA 2010. Further, it is also clear that the facts supporting a conviction for the abetment (by intentional aiding) of carrying on the business of unlicensed moneylending under s 8(1)(*b*) of the MLA 1985 would also support a conviction for assisting in the carrying on of the business of unlicensed moneylending, which is also a contravention of s 5(1) of the MLA 2010 and an offence under s 14(1) of the MLA 2010.

98 Therefore, for the purposes of s 14(1)(*b*)(ii) of the MLA 2010, the two aforementioned offences under s 8(1)(*b*) of the MLA 1985 are the same as the offences under s 14(1) of the MLA 2010 of carrying on the business of unlicensed moneylending and assisting in the carrying on of such business (respectively, contravening and assisting in the contravention of s 5(1) of the MLA 2010).

(4) Whether Parliament intended that convictions for moneylending offences under s 8(1)(*b*) of the MLA 1985 should count as prior convictions for the purposes of s 14(1)(*b*)(ii) of the MLA 2010

(A) Absence of transitional and savings provisions

99 I shall now deal with Mr Kumar's submission that if it were Parliament's intention for prior convictions for unlicensed moneylending under s 8(1)(*b*) of the MLA 1985 to count as prior convictions for the purposes of s 14(1) of the MLA 2010, then Parliament would have provided specifically for it. In this regard, Mr Kumar referred to s 5 of the Employment of Foreign Manpower Act (Cap 91A, 1997 Rev Ed) (as amended by the Employment of Foreign Workers (Amendment) Act 2007 (Act 30 of 2007)), the salient portions of which provide as follows:

> **Prohibition of employment of foreign employee without work pass**
>
> **5.**—(1) No person shall employ a foreign employee unless the foreign employee has a valid work pass.
>
> ...
>
> (6) Any person who contravenes subsection (1) shall be guilty of an offence and shall —
>
> (*a*) be liable on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 12 months or to both; and
>
> (*b*) on a second or subsequent conviction —
>
> (i) in the case of an individual, be punished with imprisonment for a term of not less than one month and not more than 12 months and also be liable to a fine not exceeding $15,000; and
>
> (ii) in the case of a body corporate, be punished with a fine not exceeding $30,000.
>
> …
>
> (8) For the purposes of this section —
>
> ...
>
> (*b*) *for the avoidance of doubt, where a person has been convicted of an offence under subsection (6), and he has on a previous occasion been convicted for contravening*

section 5(1) of the Employment of Foreign Workers Act in force immediately before the date of commencement of the Employment of Foreign Workers (Amendment) Act 2007, the first-mentioned conviction shall be considered a second or subsequent conviction under subsection (6) …

...

[emphasis added]

100 I noted that the MLA 2010 specifically provides for transitional and savings provisions under s 38. However, none of those provisions deal with the actual issue at hand. Nonetheless, I accepted Mr San's and Mr Lim's arguments that the absence of transitional and savings provisions is of little consequence to the present analysis. The following passages from F A R Bennion, *Bennion on Statutory Interpretation: A Code* (LexisNexis, 5th Ed, 2008) (at pp 314 and 725–726) are illuminating:

Section 96. Transitional provisions on repeal, amendment etc

(1) Where an Act contains substantive, amending or repealing enactments, it commonly also includes transitional provisions which regulate the coming into operation of those enactments and modify their effect during the period of transition.

(2) *Where the Act fails to include such provisions expressly, the court is required to draw such inferences as to the intended transitional arrangements as, in the light of the interpretive criteria, it considers Parliament to have intended.*

...

Section 243. The saving

A saving is a provision the intention of which is to narrow the effect of the enactment to which it refers so as to preserve some existing legal rule or right from its operation.

...

… Very often a saving is unnecessary, but is put in ex abundanti cautela *to quieten doubts.*

…

An unsatisfactory feature of savings, and a reason why good drafters resist the addition of unnecessary savings, is that they may throw doubt on matters it is intended to preserve, but which are not mentioned in the saving. ...

[emphasis added]

101 In my view, the absence of transitional and savings provisions providing that prior convictions for unlicensed moneylending under s 8(1)(*b*) of the MLA 1985 should count as prior convictions for the purposes of s 14(1)(*b*)(ii) of the MLA 2010 is far from conclusive in indicating that Parliament's intention was for it not to be so. Rather, in the absence of such provisions, it is for the court to give effect to s 14(1)(*b*)(ii) of the MLA 2010 as it considers Parliament to have intended.

(B) To ignore prior convictions for unlicensed moneylending (and the abetting by intentional aiding thereof) under s 8(1)(*b*) of the MLA 1985 would defeat the legislative intention

102 I have already traced the legislative history of the MLA 2010 (at [58]–[66] above) and concluded (at [68] above) that the markedly robust increases in the penalties for unlicensed moneylending over the years indicate that Parliament has set its face implacably against this societal problem. As stated above at [98], the offences under s 8(1)(*b*) of the MLA 1985 of carrying on the business of unlicensed moneylending and abetting (by intentionally aiding) the carrying on of such business are the same as the offences under s 14(1) of the MLA 2010 of carrying on the business of unlicensed moneylending and assisting in the carrying on of such business (respectively, contravening and assisting in the contravention of s 5(1) of the MLA 2010). What is different in the MLA 2010 is the increased penalties for both first and repeat offenders in respect of these offences. In particular, the higher maximum imprisonment term provided for repeat offenders under s 14(1)(*b*)(ii) of the MLA 2010 as compared to first offenders shows Parliament's clear intention to punish repeat offenders more severely than first offenders.

103 In my view, it would entirely defeat the legislative intention if the courts were to ignore prior convictions for unlicensed moneylending (and the abetting by intentional aiding thereof) under s 8(1)(*b*) of the MLA 1985 when considering whether an offender should be punished as a repeat offender under s 14(1)(*b*)(ii) of the MLA 2010. To ignore such prior convictions would be to "[wipe] the slate clean" [note: 32] for all offenders who have been convicted of offences under s 8(1)(*b*) of the MLA 1985. I agreed that this would be an absurd result in the face of Parliament's untiring refrain of wanting to send a strong signal of zero tolerance for unlicensed moneylending activities.

(C) The ROCA

104 Given my ruling at [103] above, Mr San's submission based on s 7E of the ROCA (see above at [31]) was quite unnecessary. However, for completeness, I will deal with it briefly. Section 7E(2)(*c*) of the ROCA provides that in the context of court proceedings, a person's criminal records will not be considered spent and can be considered for (*inter alia*) sentencing purposes. Mr San argued that given Parliament's reluctance to expunge an offender's criminal records wholly, it could not have intended that an offender's previous conviction was to be disregarded only because that previous conviction was under a repealed Act. [note: 33] With respect, I did not find this argument particularly helpful. It was as weak as it was broad. Whether or not a previous conviction under a repealed Act should be regarded as a previous conviction for the purposes of the replacement Act depends on Parliament's intent regarding the specific statutory provision in question, which intent is to be ascertained by taking into account, *inter alia*, the considerations which I have discussed in coming to my conclusion at [103] above.

Whether treating the Appellant's present offences as repeat offences under the MLA 2010 would contravene Art 11(1) of the Constitution

105 Notwithstanding my views on Parliament's intention (see above at [103]), the Appellant could nonetheless still have succeeded in the present appeal if he had succeeded on his alternative submission that to treat his convictions under s 8(1)(*b*) of the MLA 1985 as prior convictions for the purposes of s 14(1)(*b*)(ii) of the MLA 2010 would be contrary to Art 11(1) of the Constitution. To recap, Art 11(1) of the Constitution (reproduced earlier at [29] above) reads as follows:

> **Protection against retrospective criminal laws and repeated trials**
>
> **11.**—(1) No person shall be punished for an act or omission which was not punishable by law when it was done or made, and *no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.* [emphasis added]

106 If the Appellant's alternative submission were correct, he would succeed in his appeal because Parliament's powers are ultimately limited by the Constitution. In this regard, Kevin Y L Tan & Thio Li-ann, *Constitutional Law in Malaysia and Singapore* (LexisNexis, 3rd Ed, 2010) states this trite principle thus (at p 353):

> **(2) LIMITS TO LEGISLATIVE COMPETENCE**
>
> A legislative body which operates under a written constitution derives its legislative competence and powers from the constitution itself. It cannot therefore promulgate laws which are contrary to the constitution, unless it complies with the special procedure for constitutional amendment. …

107 Mr Kumar argued that the second limb of Art 11(1) of the Constitution prohibited treating the Appellant as a repeat offender for the purposes of s 14(1)(*b*)(ii) of the MLA 2010. This was because the word "offence" in s 14(1)(*b*)(ii) of the MLA 2010 referred to an offence under s 14(1) of the MLA 2010, and not an offence under s 8(1)(*b*) of the MLA 1985. [note: 34] Therefore, since the Appellant was being convicted under s 14(1) of the MLA 2010 for the first time, to treat him as a repeat offender for the purposes of s 14(1)(*b*)(ii) of the MLA 2010 was to apply s 14(1)(*b*)(ii) to him retrospectively. [note: 35]

108 With respect, this was, on closer analysis, no more than a tired rehash of Mr Kumar's argument that s 14(1)(*b*)(ii) of the MLA 2010 should not be construed to include convictions for unlicensed moneylending under s 8(1)(*b*) of the MLA 1985 for the purposes of determining whether the Appellant was a repeat offender. Since I have rejected Mr Kumar's argument on that point (see above at [103]), his argument in relation to Art 11(1) of the Constitution necessarily fails as well.

109 The effect of the second limb of Art 11(1) of the Constitution is that no one may be punished more severely for an offence than was legally provided for when the offence was committed. Criminal laws guide human behaviour by threatening the imposition of certain penalties for certain misconduct. It would not be fair to raise the stakes after the misconduct is committed. The more severe penalties would also achieve nothing in the way of general deterrence by then.

110 Article 11(1) of the Constitution might arguably be engaged if one conceives of the enhanced penalties for second or subsequent offences as being also punishment for the first offence. On that conception, since the enhanced penalties for second or subsequent moneylending offences are more severe now than they were when the Appellant committed his prior moneylending offences in November 2008, he would be suffering greater punishment for his earlier offences than was prescribed by law at the time those offences were committed. I do not think this conception of the enhanced penalties for repeat offences is correct. The correct view is that such enhanced penalties are punishment for only the repeat offences, and not for the earlier offences as well.

111 This is because the effect of the first offence is to *aggravate* the commission of the repeat offence. The aggravated nature of the repeat offence forms the basis for punishing it more severely. Even without legislation specifically providing for it, it is an established sentencing principle for repeat offenders to be punished more severely on account of the aggravated nature of their second or subsequent offences. Legislation such as s 14(1)(*b*)(ii) of the MLA 2010 merely serves to increase the court's sentencing powers when it comes to taking into account the aggravated nature of the repeat offence. The enhanced penalties imposed on a repeat offender are to punish him for committing the same offence a second or subsequent time. It would be a stretch to assert that they are imposed to punish him once again for committing the offence the first time.

112 Therefore, the only question that the second limb of Art 11(1) of the Constitution raises is whether the Appellant suffers greater punishment for his present offences than was prescribed by law at the time they were committed. Since the enhanced penalties under s 14(1)(*b*)(ii) of the MLA 2010 were in force at the time the Appellant committed the present offences, there is no contravention of Art 11(1). It is not unfair or retrospective to impose the enhanced penalties for repeat offences provided for under s 14(1)(*b*)(ii) of the MLA 2010 on the Appellant as he could have avoided those penalties by not committing the present offences. I leave this point by gratefully adopting Phillimore J's eloquent concluding remarks in *Austin* (at 556):

> It is said that a retrospective effect must not be given to a penal statute. No doubt; one can hardly imagine the Legislature punishing a man for having done an act which at the time of its commission was a perfectly innocent act. *But to prescribe punishment for an old offender in case in the future he persists in his crime is quite another matter. The offence in question was committed since the Act* [*viz*, the Criminal Law Amendment Act 1912 (c 20) (UK)]*. The Act says that a man guilty in the future may, if he has already been guilty in the past, be punished as he could not have been before the Act. There is nothing wrong in that. No man has such a vested interest in his past crimes and their consequences as would entitle him to insist that in no future legislation shall any regard whatever be had to his previous history.* [emphasis added]

Summary and determination of the preliminary issue

113 To summarise the foregoing analysis of the preliminary issue, there is no particular significance to be attached to the repeal of the MLA 1985 and its re-enactment as the MLA 2008. This appears to be an instance of legislative housekeeping rather than one of radical change. Whether previous offences committed under s 8(1)(*b*) of the MLA 1985 may be taken into account as prior offences for the purposes of s 14(1)(*b*)(ii) of the MLA 2010 is a matter of statutory construction. In this regard, the offences under s 8(1)(*b*) of the MLA 1985 of carrying on the business of unlicensed moneylending and abetting (by intentionally aiding) the carrying on of such business are the same as the offences under s 14(1) of the MLA 2010 of carrying on the business of unlicensed moneylending and assisting in the carrying on of such business (respectively, contravening and assisting in the contravention of s 5(1) of the MLA 2010).

114 It is abundantly clear from the conspicuous increases in the penalties for unlicensed moneylending over the years, the parliamentary debates and the more severe penalties for repeat offenders *vis-à-vis* first offenders that Parliament has signalled that offenders who are repeatedly involved (either as principal or assistant) in unlicensed moneylending operations must be severely dealt with. On a purposive interpretation of s 14(1)(*b*)(ii) of the MLA 2010, previous offences of carrying on the business of unlicensed moneylending under s 8(1)(*b*) of the MLA 1985 and abetting (by intentionally aiding) the same should count as prior offences for the purposes of s 14(1)(*b*)(ii) of the MLA 2010. This would be the case regardless of whether the second or subsequent offence under s 14(1) of the MLA 2010 is one of carrying on the business of unlicensed moneylending or assisting in the same (respectively, contravening and assisting in the contravention of s 5(1) of the MLA 2010). This construction of s 14(1)(*b*)(ii) of the MLA 2010 does not contravene Art 11(1) of the Constitution.

115 Focusing on the specific circumstances of the Appellant's case now, the Appellant's prior convictions were for abetting (by intentionally aiding) the carrying on of the business of unlicensed moneylending under s 8(1)(*b*) of the MLA 1985. He did so by disbursing money to an unlicensed moneylending syndicate's runner. His present charges were for issuing loans and collecting repayments of loans in consequence of a conspiracy to carry on the business of unlincensed moneylending, which conduct was a contravention of s 5(1) of the MLA 2010 and, thus, an offence under s 14(1) of the MLA 2010. In this regard, I disagreed with Mr Kumar's submission that in respect

of the present offences, the Appellant merely assisted in the contravention of s 5(1) of the MLA 2010.

116 Notwithstanding that the Statement of Facts stated that the Appellant was arrested "for *assisting* in carrying on an unlicensed moneylending business" [emphasis added], [note: 36] it also made clear that the Appellant was a partner in the unlicensed moneylending business whose activities contravened s 5(1) of the MLA 2010. [note: 37] In fact, the Appellant can be considered an "equity partner" since he was promised a 30% share of the profits.

117 I noted that the acts of collecting repayment and issuing loans on behalf of an unlicensed moneylender came within the defined instances of assisting in the contravention of s 14(1) of the MLA 2010 (and in turn, assisting in the contravention of s 5(1) of the MLA 2010) as set out by s 14(3A) of the MLA 2010. Sections 14(3A)(*a*) and (*b*) provide as follows:

> **Unlicensed moneylending**
>
> **14**. …
>
> …
>
> (3A) Without prejudice to the generality of subsection (1), a person assists in a contravention of subsection (1) if —
>
> (*a*) he *collects or demands payment of a loan on behalf of a person* whom he knows or has reasonable grounds to believe is carrying on a business in contravention of section 5(1);
>
> (*b*) he receives, possesses, conceals or *disposes of any funds* or other property, or engages in a banking transaction relating to any funds, *on behalf of any person* knowing or having reasonable grounds to believe that —
>
> (i) the person is carrying on a business in contravention of section 5(1); and
>
> (ii) either the funds are (or are intended to be) disbursed as a loan by that person, or the funds or property is repayment of a loan made by the person …
>
> [emphasis added]

However, the Appellant was not merely assisting in the unlicensed moneylending business by collecting repayments and issuing loans on behalf of B2 and B3. As stated above, he was in partnership with them as they conducted the unlicensed moneylending business together. I therefore accepted Mr San's submission that the Appellant's conduct had clearly gone beyond that of mere assistance. In respect of the present offences, the Appellant had been carrying on the business of unlicensed moneylending on his own account.

118 Therefore, the Appellant's prior offences were for abetting (by intentionally aiding) the carrying on of an unlicensed moneylending business under s 8(1)(*b*) of the MLA 1985, while his present offences were for actually carrying on the business of unlicensed moneylending in contravention of s 5(1) of the MLA 2010. I have held (see above at [98]) that these offences are the same for the purposes of s 14(1)(*b*)(ii) of the MLA 2010. In the light of the above, Mr Kumar's submission that the Appellant's previous offences (which he said were for abetting) and the Appellant's present offences (which he said were for assisting) were different offences (see above at [28]) was quite clearly off

the mark. As none of Mr Kumar's other submissions found any success either, I decided the preliminary issue in the affirmative and against the Appellant. To my mind, it was clear beyond doubt that the Appellant's repeated intimate involvement in unlicensed moneylending operations in relation to his previous and present convictions was exactly the type of conduct which Parliament intended to deter in enacting s 14(1)(*b*)(ii) of the MLA 2010 as legislation.

119 In my view, as far as the offences of carrying on the business of unlicensed moneylending and abetting (by intentionally aiding) the same are concerned, ss 5(1) and 14(1) of the MLA 2008 (and in turn, ss 5(1) and 14(1) of the MLA 2010) are in substance an affirmation and continuance of the former law under s 8(1) of the MLA 1985 (read with the relevant abetment provisions under the 1985 revised edition of the Penal Code, in the case of abetment by intentional aiding). Therefore, the DJ was correct to consider the Appellant's previous convictions under s 8(1)(*b*) of the MLA 1985 for abetting (by intentionally aiding) the carrying on of the business of unlicensed moneylending in determining that his present offences under s 14(1) of the MLA 2010 (of contravening s 5(1) of the MLA 2010) were "second or subsequent offence[s]" for the purposes of s 14(1)(*b*)(ii) of the MLA 2010. In other words, the enhanced penalty provisions under s 14(1)(*b*)(ii) of the MLA 2010 were correctly applied to the Appellant.

120 This is an appropriate juncture to state that before me, Mr San also clarified that the only reason why the Appellant was charged with abetment in the present proceedings was because there was a conspiracy involved. Section 107 of the Penal Code states that abetment may take place by instigation, intentional aiding or conspiracy. To that extent, it was incidental that the element of abetment was repeated in the present offences as well. I should make it clear that had the Appellant been acting alone and, thus, not charged with abetment with regard to the present offences, it would not have made any difference to my decision on the preliminary issue.

Reduction of the Appellant's sentence in respect of fines and caning

121 Having established that the Appellant was correctly treated as a repeat offender for the purposes of s 14(1)(*b*)(ii) of the MLA 2010, I moved on to consider the merits of his appeal against sentence proper. Mr Kumar submitted that the total sentences in respect of the fines, caning and imprisonment imposed on the Appellant were manifestly excessive.

Fines

122 I agreed with Mr Kumar that the fines imposed on the Appellant were manifestly excessive. In *Chia Kah Boon v Public Prosecutor* [1999] 2 SLR(R) 1163 ("*Chia Kah Boon*"), the District Judge ordered the appellant to pay a total of $4,606,000 in fines (in default, 50 months' imprisonment) – more than 1,000 times his annual income – for nine charges of the offence under s 130(1) of the Customs Act (Cap 70, 1997 Rev Ed) of importing uncustomed goods into Singapore. On appeal, Yong CJ held that the cumulative effect of the fines was contrary to the second limb of the totality principle in that it imposed "a crushing sentence" on the appellant not in keeping with his records and prospects. The appellant's total fines were thus reduced to $1,550,993.25 (however, the default terms of imprisonment for the nine charges were increased to 203 months in total as Yong CJ considered the default imprisonment terms imposed by the District Judge manifestly inadequate). In considering the appropriate sentence to be imposed, Yong CJ stated (see *Chia Kah Boon* at [15]):

> Turning then to the question of what the appropriate sentence would be in the circumstances of the present case, in determining the fines to be imposed on the appellant, I took into account two competing considerations. *On one hand, the fines had to be of an amount which the appellant could reasonably pay given his financial means. On the other hand, the fines had to be*

> *fixed at a level which would be sufficiently high to achieve the dual objectives of deterrence, in terms of deterring both the appellant and other importers from evading GST [goods and services tax] on imported goods in future, and retribution, in the sense of reflecting society's abhorrence of the offence under s 130(1)(*a*) of the Customs Act.* In particular, importers and other persons who might be tempted to commit the same offence should not be given the impression that they may be let off lightly for their misdeeds if they are detected simply because they lack the financial ability to pay the fines which may be imposed under s 130(1)(*i*) of the Act. Bearing these considerations in mind, *I concluded that a fine of five times the amount of GST payable in respect of each charge would be just and appropriate in light of the appellant's limited financial means, the totality principle of sentencing*, the aggravated nature of the offences in question, and the deterrent and retributive aspects of the penalty under s 130(1)(*i*) of the Customs Act. ... [emphasis added]

I should add that Yong CJ also ordered the default terms of imprisonment for two of the nine charges to run concurrently, resulting in an aggregate default term of imprisonment of 71 months (*cf* the 50 months imposed by the District Judge).

123 In the present case, as far as the facts in the record show, the Appellant does not appear to any extent to be a man of any financial means; neither did the Prosecution suggest that he had the means to pay the fines imposed by the DJ or that he had derived significant financial benefits from his offending conduct. I did not think that the cumulative fine of $480,000 was an amount which, by any stretch of imagination, the Appellant could pay. To sentence the Appellant to a cumulative fine of this amount was effectively to order an additional imprisonment sentence (in default of the amount that the Appellant could not pay). *If the Appellant were the financier (as B3 was) of the unlicensed moneylending business, or if he had made significant profits from the business, he would certainly have deserved a substantial fine to ensure that all the profits which he made would be disgorged.* This much is clear from the statement by the then Senior Minister of State for Law, Assoc Prof Ho, during the second reading of the Moneylenders Bill 2009 as follows (see *Singapore Parliamentary Debates* vol 86 at col 2056):

> As loanshark syndicates evolve their *modus operandi* to take on more characteristics of organised criminal groups, it is no longer sufficient to deal with loansharking as discrete acts of runners and harassers. We need measures that can cripple them, that is, *disgorge them of their ill-gotten gains, choke the supply of funds* and availability of foot soldiers, target the irresponsible borrowers and take loansharks out of the system for as long as we need to. Thus, this Bill allows us to deal with loanshark syndicates as criminal organisations, extend beyond the frontline to target financiers and masterminds, disrupt the flow of money and resources and ensure that syndicate leaders do not escape the bite of our laws by directing local operatives from the haven of other countries. To cripple the many layers of a loanshark syndicate, anyone who contributes to or facilitates a loansharking operation will attract the wrath of the law. [emphasis added]

124 In the present case, the Appellant was plainly merely "the hands and legs" of, and not the supplier of capital for, the unlicensed moneylending business. Further, the Statement of Facts stated that he had received only $600 in profits from the business. Taking these considerations into account, I reduced the fines imposed on the Appellant for each of the six charges proceeded on from $80,000 to $40,000. Accordingly, I also reduced the default term of imprisonment for each charge from four months to two months. Therefore, the Appellant's aggregate sentence by way of fine was reduced to $240,000 (in default, 12 months' imprisonment). I considered that this aggregate fine was of a level sufficient to deter other persons in the Appellant's position from engaging in unlicensed moneylending and to reflect society's abhorrence of the Appellant's conduct.

125 Before leaving the issue of fines, I should perhaps point out that there is a paucity of case authorities from both within and outside our jurisdiction providing any comprehensive guidance as to how a court should assess the quantum of fine to be imposed in circumstances where a written penal law (such as that in issue in the present appeal) mandates that a *conjunctive sentence* of *both* a fine and a term of imprisonment be meted out to an offender. Written penal laws ordinarily give the courts the option of imposing either a fine or a term of imprisonment or both. In such situations, there have been some general principles laid down by the courts to the effect that the judicial practice of combining a fine with a custodial sentence should generally be eschewed. In this particular respect, it may be profitable to refer to the Malaysian case of *Thavanathan a/l Balasubramaniam v Public Prosecutor* [1997] 2 MLJ 401 ("*Thavanathan a/l Balasubramaniam*"), where the offender in question was charged, acquitted and later convicted of corruption. The Malaysian Supreme Court perceptively observed (at 423D–E):

> In our view, a punitive fine should not be added to a term of imprisonment which a sentencer considers is itself adequate punishment for the offence except in rare cases where, for example, even the maximum permitted custodial sentence is considered to be inadequate.

126 In the much older Malaysian case of *Yap Teng Chai v Public Prosecutor* (1959) 25 MLJ 205 ("*Yap Teng Chai*"), where the offender in question was convicted of the offence of attempting to escape from lawful custody, Hepworth J similarly noted (at 205I–206A):

> In general I take the view that a sentence should be either a sentence of imprisonment or a sentence of fine and not both. Again speaking generally cases in which a sentence of imprisonment and fine might, in my opinion, fairly be imposed are cases of serious revenue offences and in the case of offences which are not *mala per se* but where it has become apparent that sentences of fine only on other persons in the area in respect of similar offence[s] in the recent past have been insufficient to act as a deterrent.

I should parenthetically add that in the context of our legislative regime against illegal moneylending activities in Singapore, it appears that the introduction via the Moneylenders Bill 2009 (enacted as the Moneylenders (Amendment) Act 2010 (Act 5 of 2010)) of the mandatory conjunctive imposition of both a fine and a term of imprisonment for first as well as repeat offenders (see, respectively, ss 14(1)(*b*)(i) and 14(1)(*b*)(ii) of the MLA 2008 as amended by the aforesaid amendment Act) was precisely the upshot of Parliament's resolve to strengthen the legislative regime in response to the perception at the time that a stronger signal should be sent out to society to deter illegal moneylending activities (see [65]–[66] above).

127 A quick survey of the jurisprudence in foreign jurisdictions also showed that in at least two other jurisdictions, namely, England (see David Thomas, *Current Sentencing Practice* (Sweet & Maxwell, 2010) at vol 2, paras J1-3A01–J1-3E01) and Hong Kong (see I Grenville Cross & Patrick W S Cheung, *Sentencing in Hong Kong* (LexisNexis, 5th Ed, 2007) ("*Sentencing in Hong Kong*") at p 245), the position with respect to situations where conjunctive sentences of fine and imprisonment may discretionarily be imposed has always been that while the courts may impose a fine in conjunction with a custodial sentence where it is shown that an offender has profited from the offence, *a fine should not be imposed if the offender lacks the means to pay the fine and will have to serve the imprisonment term imposed in default of payment of the fine.* For the sake of completeness, I shall also quote a passage from *Sentencing in Hong Kong* (at p 245) which succinctly summarises the principles applicable to the determination of the length of the default custodial sentence whenever conjunctive sentences of fine and imprisonment are imposed:

> If a term of imprisonment is imposed upon an accused in default, that is not to be regarded as an

additional punishment. It is simply the means by which the accused is encouraged to surrender his profits or to pay his debt to society. *However, when imprisonment is coupled with a fine, and a term is fixed in default, a court should consider the overall sentence to which the accused may become subject*: R v Savundra *(1968) 52 Cr App R 637, 646*. *The court should ensure that in the event of default the total sentence to be served is not disproportionate to the offence*: R v Green and Green *(1984) 6 Cr App R (S) 329, 332*. Such sentences, inevitably, will be consecutive to one another. [emphasis added]

These words, if I may add, are a succinct summary of the judicial reasoning underpinning the particular sentences meted out in each of the cases cited. In *Emil Savundra, Stuart de Quincey Walker* (1968) 52 Cr App R 637 ("*Savundra*"), where the offenders were arrested and tried on charges of gross fraud, the English Court of Appeal stated at 646:

Turning to the appeals against sentence and dealing first with Savundra's appeal, there can be no doubt that he was the architect of these gross frauds and played the chief part in carrying them out. Equally, there is no doubt that by these frauds he enriched himself by many hundreds of thousands of pounds at the expense of the policyholders who had trusted the Fire, Auto and Marine Insurance Company Limited with their money and who, as a result of the frauds, lost large sums which many of them could ill afford. This was fraud on an enormous scale. Moreover, this appellant did not stop short of uttering forged certificates for over £500,000 of stock on one occasion and over £800,000 worth of shares on another for the purpose of covering up his defalcations. *Having regard to the gravity of these offences, this Court does not consider that a sentence of ten years' imprisonment would have been any too long. The learned judge sentenced this appellant to eight years' imprisonment and he fined him in all £50,000 and in default of paying that £50,000 he sentenced him to a further two years' imprisonment*. [emphasis added]

In *Jonathan Russell Green and John Green* (1984) 6 Cr App R (S) 329 ("*Green and Green*"), where the offenders in question were convicted of illegal importation of cannabis into the United Kingdom and sentenced to fines in addition to imprisonment terms, the English Court of Appeal (citing *Savundra*, among other authorities, with approval) laid down the proposition in more substantive terms as follows (see *Green and Green* at 332):

We have been assisted by Mr. Corkery [counsel for the second appellant] taking us through a fairly elaborate citation of authority. I do not propose to refer to all those authorities, but I summarise their effect as follows. *If it cannot be shown that an offender has made a profit out of a transaction and has no means to pay a fine, it is not right to impose a fine in addition to a prison sentence (see MAUND (1980) 2 Cr.App.R.(S.) 289). If it is apparent to the court that, as the result of a crime, the accused has received a large financial benefit and if there is reason to suppose that some of that financial benefit is still available to him, it is perfectly proper to impose a fine in addition to a term of immediate imprisonment. But, nevertheless, when imposing the fine and fixing the alternative penalty to be served in default of payment of the fine, the court should have regard to the overall term of imprisonment that will be served in such circumstances. The court should ensure that the overall term of imprisonment to be served in such a contingency will not be disappropriate to the offence itself: SAVUNDRA (1968) 52 Cr.App.R. 637; LOT CARTER (1977) 67 Cr.App.R. 404; and*, *BENMORE (1983) 5 Cr.App.R.(S.) 468*. [emphasis added]

128 I broadly agree with the approach on conjunctive sentencing adopted in *Thavanathan a/l Balasubramaniam*, *Yap Teng Chai*, *Savundra* and *Green and Green*. I am of the view that in the context of ss 14(1)(*b*)(i) and 14(1)(*b*)(ii) of the MLA 2010, the mandatory fine imposed in addition to

the mandatory term of imprisonment should *ordinarily* be pegged closer to the prescribed minimum quantum of $30,000, especially if the offender demonstrably has little or no means of paying even the statutorily mandated minimum fine of $30,000. *This is provided also that the default custodial sentence is imposed in a way that would not undermine the stronger deterrent effect which Parliament intended the mandatory conjunctive sentencing regime under the relevant provisions of the MLA 2010 to have on existing and potential unlicensed moneylenders in our society.* Fines, the payment of which is often secured by the court's imposition of default imprisonment terms which cannot be negligible if they are to serve their purpose of "prevent[ing] evasion of the payment of fines" (see *Low Meng Chay v Public Prosecutor* [1993] 1 SLR(R) 46 at [13]), should, wherever possible, avoid being made a "disguise" or "cloak" for substantial additional terms of imprisonment (see Tan Yock Lin, *Criminal Procedure* (LexisNexis, 2010) at vol 3, para 1751). Further, it ought to be also borne in mind that while the same principle of remission applies to default imprisonment sentences, the scenario may be quite different if part of the fine is paid before or after the default imprisonment sentence has commenced (see *Tan Lai Kiat v Public Prosecutor* [2010] 3 SLR 1042 at [46]–[49]).

129 In providing for a mandatory fine together with a mandatory custodial sentence in ss 14(1)(*b*) of the MLA 2010, Parliament plainly intended to impose an additional *financial* penalty on offenders as deterrence. It follows that a substantial default *custodial* sentence should not be imposed on an offender who is clearly unable to pay the mandatory fine. On reflection, I have to acknowledge that had this issue been properly argued before me, I would have been inclined to reduce the Appellant's fines to the minimum of $30,000 on each charge and to reset the default imprisonment sentence per charge to less than a month's imprisonment. I think that in a conjunctive penalty scenario that stipulates a mandatory minimum fine, the default imprisonment term for an offender with no means to pay even the mandated minimum fine should not ordinarily be substantial. In particular, it seems to me that it was never the legislative intention of the 2010 amendments to the MLA 2008 (see above at [65]–[66]) to use the mandatory fine scheme as a device to impose further lengthy imprisonment terms in the event of default.

130 The foregoing, however, is not to say that a higher quantum of fine and a corresponding default imprisonment sentence should not be imposed in deserving situations (for instance, where the offender has reaped and retained a profit from his committal of the offence in question, or where even the maximum permitted custodial sentence is considered to be inadequate). It cannot be overemphasised that criminal sentencing is an onerous and delicate task which requires each and every case to be closely examined and decided based on its own particular set of facts.

131 In summary, the applicable principles for mandatory conjunctive sentencing in the context of s 14(1)(*b*) of the MLA 2010 are as follows:

(a) The mandatory fine should ordinarily be pegged closer to the minimum of $30,000 unless:

(i) the offender has reaped illicit profits which should be disgorged; and/or

(ii) even the maximum permitted custodial sentence is, in rare cases, inadequate to reflect the full extent of the offender's criminality.

(b) Where the offender is clearly unable to pay the mandatory $30,000 minimum fine, the default imprisonment sentence imposed should not be substantial.

Caning

132 I also agreed with Mr Kumar that the sentence of a total of six strokes of the cane imposed on

the Appellant (one stroke for each of the six charges proceeded on) was manifestly excessive. The DJ did not specifically justify the imposition of six strokes of the cane on the Appellant by reference to any precedents. When queried, Mr San ventured that the DJ imposed six strokes of the cane only because he imposed the same sentence of one stroke of the cane for each of the six charges proceeded on. Mr San diffidently suggested that as the six charges were for similar offences, it would be arbitrary to impose caning for some of them but not for others.

133 Yong CJ held at [11] of *Chia Kah Boon* that the totality principle could be applied in the context of a cumulative sentence made up of fines for several distinct offences. It seems to me that this principle may also be applied in the context of a cumulative sentence of caning imposed for several distinct offences. Contrary to Mr San's suggestion, it was not necessary for the Appellant's conviction of each charge to attract the exact same sentence. Where multiple convictions for similar offences are made, the court is certainly entitled to vary the sentences for each charge on account of the totality principle.

134 In the present case, the Appellant's offences were not aggravated by any acts of violence or intimidation. In my view, a total sentence of six strokes of the cane was disproportionate to "the overall gravity of his criminal conduct" (see *Maideen Pillai v Public Prosecutor* [1995] 3 SLR(R) 706 at [11]) and, therefore, manifestly excessive. Accordingly, I held that the sentence of one stroke of the cane was to remain only for the first three charges proceeded on (*viz*, District Arrest Cases Nos 40653, 41704 and 41707 of 2010). The sentences in respect of caning for the remaining three charges proceeded on (*viz*, District Arrest Cases Nos 42909, 24912 and 24913 of 2010) were set aside.

Imprisonment

135 As for the Appellant's imprisonment term imposed by the DJ (*viz*, a total of 60 months' imprisonment), I was not inclined to disturb it. The Appellant's partners in the unlicensed moneylending business, B2 and B3, were sentenced to imprisonment terms of 45 months and 39 months respectively (see *Public Prosecutor v Lee Kim Hock* [2011] SGDC 201 ("*Lee Kim Hock*") at [12] and [44] respectively). However, while B2 and B3 had no relevant antecedents (see *Lee Kim Hock* at [9] and [12(e)] respectively), the Appellant had returned to unlicensed moneylending at least by April 2010, when (as mentioned in the Statement of Facts) [note: 38] the Appellant was working as a runner for the unlicensed moneylender known as "Sam" (see [8] above). This was close on the heels of the five-month imprisonment term imposed on the Appellant for his prior convictions under s 8(1)(*b*) of the MLA 1985 in December 2008.

136 This indicated to me the extent of the Appellant's recalcitrance and the little effect which his previous five-month imprisonment term had on him. Moreover, the Appellant had escalated the gravity of his offences since his previous term of imprisonment. First, he had graduated from being a mere runner for an unlicensed moneylending business to being a partner in such business. Second, while the Appellant was convicted of only two charges in December 2008, he was convicted of six charges in the present case. In fact, he faced a total of 18 separate charges (involving 13 different debtors) this time around, of which six were proceeded on, with the remaining 12 being taken into consideration for sentencing purposes (see [1] above). Taking all the circumstances into account, I did not think that the 60-month imprisonment term imposed by the DJ was manifestly excessive. I therefore dismissed the Appellant's appeal in that regard.

Observation

137 The courts have noted Parliament's implacable resolve to combat all manner of illegal

moneylending activities. This has been emphatically manifested through a series of legislative changes that have robustly enhanced the punitive consequences of such offending conduct. The sentences meted out by the courts for moneylending offences have, to date, been severe, and are underpinned by the desire to signal that there will be no judicial tolerance for such conduct. The principal sentencing consideration has been that of general deterrence, with specific deterrence always being an added consideration for repeat offenders. Nevertheless, the sentences, while severe, must also always remain proportionate to the totality of the *particular* offending conduct being assessed. Care must be taken to assiduously calibrate the punishment against the offending conduct. In every case, the punishment must fit the crime and the principle of proportionality remains a cardinal determinant in this area of sentencing.

138 Thus, although Parliament has made clear its intention that persons who assist in unlicensed moneylending operations will be liable to the same penalties as persons who actually carry on such operations (see the extract from *Singapore Parliamentary Debates* vol 86 at col 2059 reproduced at [72] above), depending on the facts of the case at hand, it may be appropriate to punish more severely offenders who have previously been convicted of actually carrying on the business of unlicensed moneylending, as compared to offenders who have previously been convicted of assisting in the carrying on of such business. As for offenders who have previously been convicted of both assisting in the business of unlicensed moneylending and actually carrying on such business, it may (again depending on the facts of the particular case in question) be appropriate to impose on them sentences in between, with stiffer punishment being meted out to offenders who have graduated from simply assisting in the business of unlicensed moneylending to actually carrying on such business.

Conclusion

139 The DJ was correct in treating the Appellant as a repeat offender for the purposes of s 14(1)(*b*)(ii) of the MLA 2010. Notwithstanding that, in the light of the sentencing principles of proportionality and totality, I allowed the present appeal in part and reduced the total fine imposed on the Appellant for the six charges proceeded on from $480,000 to $240,000. Accordingly, I also reduced the total default term of imprisonment from two years to one year. In addition, I halved the total number of strokes of the cane imposed on the Appellant from six to three, ordering the sentence of one stroke of the cane per charge to remain only in respect of District Arrest Cases Nos 40653, 41704 and 41707 of 2010. The total imprisonment sentence of 60 months imposed by the DJ remained for I saw no reason to disturb it.

[note: 1] See para 18 of the Statement of Facts (at Record of Proceedings ("ROP") p 24).

[note: 2] See the certified transcript of the notes of evidence ("the NE") for the hearing on 25 January 2011 (at ROP p 65).

[note: 3] See ROP p 9.

[note: 4] See ROP p 15.

[note: 5] See the Respondent's Bundle of Authorities at Tab A.

[note: 6] See ROP p 82.

[note: 7] It appears that the charge sheets in respect of the Appellant's earlier moneylending offences

(see the Respondent's Bundle of Authorities at Tab A) were incorrect in citing the version of the MLA 1985 in force before the amendments made by the Moneylenders (Amendment) Act 2005 (Act 44 of 2005), which came into operation on 1 January 2006.

[note: 8] See the NE for the hearing on 25 January 2011 (at ROP p 65).

[note: 9] See the Appellant's Submissions dated 22 August 2011 ("the Appellant's Submissions") at para 4.

[note: 10] See the Appellant's Submissions at paras 4 and 22.

[note: 11] See the Appellant's Submissions at para 22.

[note: 12] See the Appellant's Submissions at paras 5, 23 and 33–38.

[note: 13] See the Appellant's Submissions at para 38.

[note: 14] See the Appellant's Submissions at para 32.

[note: 15] See the Appellant's Response dated 28 August 2011 at para 25.

[note: 16] See the Appellant's Submissions at para 32.

[note: 17] See the Appellant's Submissions at para 31.

[note: 18] See the Appellant's Submissions at paras 24–25 and 39–40.

[note: 19] See the Respondent's Submissions dated 15 August 2011 ("the Respondent's Submissions") at para 19.

[note: 20] See the Respondent's Submissions at para 32.

[note: 21] See the Respondent's Submissions at para 33.

[note: 22] *Ibid*.

[note: 23] See the Respondent's Submissions at paras 35–38.

[note: 24] See the Respondent's Submissions at para 37.

[note: 25] See the Respondent's Submissions at para 38.

[note: 26] See the Respondent's Submissions at para 40.

[note: 27] See the Respondent's Submissions at paras 41–44.

[note: 28] See the Respondent's Submissions at para 45.

[note: 29] See Mr Lim's submissions dated 22 August 2011 ("the Amicus Curiae's Written Submissions") at para 5.

[note: 30] See the Respondent's Submissions at paras 39–40 and the Amicus Curiae's Written Submissions at paras 46–47.

[note: 31] See the Appellant's Submissions at para 35.

[note: 32] See the Respondent's Submissions at para 32.

[note: 33] See the Respondent's Submissions at para 38.

[note: 34] See the Appellant's Submissions at para 40.

[note: 35] *Ibid*.

[note: 36] See the Statement of Facts at para 3 (at ROP p 21).

[note: 37] See the Statement of Facts at para 11 (at ROP p 23).

[note: 38] See the Statement of Facts at para 9 (at ROP p 22).

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