IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 125

Magistrate's Appeal No 9042 of 2016/01

Between

Abdul Ghani Bin Tahir

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Statutory offences] — [Corruption, Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act]

[Criminal Law] — [Elements of crime] — [Mens rea] — [Attributable to his Neglect]

[Criminal Law] — [Statutory offences] — [Companies Act]

[Companies] — [Directors] — [Resident directors] — [Criminal offences]

[Criminal Procedure and Sentencing] — [Sentencing] — [Benchmark sentences]

[Criminal Procedure and Sentencing] — [Compensation and costs] — [Costs for Prosecution]

TABLE OF CONTENTS

Abdul Ghani bin Tahir
v
Public Prosecutor

[2017] SGHC 125

High Court — Magistrate's Appeal No 9042 of 2016/01
Chan Seng Onn J
20 January 2017

26 May 2017 Judgment reserved.

Chan Seng Onn J:

Introduction

1 This is the first prosecution of its kind under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("the CDSA") where a director of a company has been convicted and sentenced to imprisonment where the use of a company's bank accounts in connection with money laundering offences was found to be attributable to his neglect. Incidentally, it is also the first reported case in which a director has been sentenced to imprisonment on account of a failure to exercise reasonable diligence under s 157(1) of the Companies Act (Cap 50, 2006 Rev Ed) ("the CA").

2 The said director is Mr Abdul Ghani Bin Tahir ("the Appellant"), who was a local director of a Singapore-incorporated company, World Eastern

International Pte Ltd ("WEL"). After a trial that lasted 12 days, the Appellant was convicted by the trial judge ("the District Judge") of six charges for WEL's transfer of stolen monies being attributable to his neglect under s 47(1)(*b*) punishable under s 47(6)(*a*) read with s 59(1)(*b*) of the CDSA (referred to as either "the CDSA charges" or "the CDSA offences") and one charge of failing to exercise reasonable diligence as a director under s 157(1) of the CA (referred to as either "the CA charge" or "the CA offence"). He was sentenced to an aggregate imprisonment term of 26 months and four weeks, disqualified from being a director for five years and ordered to pay S$3992.74 by way of costs to the Prosecution.

3 The decision of the District Judge can be found in *Public Prosecutor v Abdul Ghani bin Tahir* [2016] SGDC 161 ("the GD"). The Appellant now appeals against his convictions and sentences on all seven charges as well as the order to pay costs. The Prosecution seeks to uphold the convictions and sentences.

4 At the outset, I would like to record my deep appreciation to counsel for their invaluable assistance in this appeal. In particular, Mr Jerald Foo ("Mr Foo"), the *amicus curiae*, should be specially commended for his comprehensive research, analysis and clear written submissions which were instrumental in helping me arrive at my decision.

Background facts

5 The material undisputed facts can be found at [4] of the GD. I shall briefly set out only the background facts that are relevant to the present appeal.

6 The Appellant is a chartered accountant who is in the business of providing corporate secretarial services to small and medium business

enterprises.[1] As part of these services, the Appellant incorporates companies on behalf of his clients and acts as the resident director of companies whose directors are not ordinarily residents in Singapore.

7 The Appellant agreed to incorporate the following four companies in Singapore for foreign nationals introduced by one Nadia Monica, who according to the Appellant is an agent of Romanian origin ("Nadia"): (a) Kassar Logistics Pte Ltd ("Kassar"); (b) Lottus International Pte Ltd ("Lottus"); (c) Mega Zone International Pte Ltd ("Mega Zone"); and (d) WEL. The Appellant also agreed to act as the local resident director for all these companies.

8 Although all the seven charges faced by the Appellant relate only to the activities of WEL, some facts relating to the incorporation and subsequent activities of Kassar and Lottus are relevant to this appeal.

9 The Appellant incorporated Kassar and Lottus after meeting Nadia in Singapore with two other Romanians in September 2011.[2] He then attempted to open corporate bank accounts for both Kassar and Lottus with Standard Chartered Bank ("SCB") but these were declined. He was informed that the bank "did a check on the directors and it did not turn out quite well".[3] He thus opened bank accounts instead with Oversea-Chinese Bank Corporation ("OCBC") and Hongkong-Shanghai Bank Corporation ("HSBC").

10 On 5 and 9 December 2011, Nadia informed the Appellant via email that she had two new clients interested "to open a company" in Singapore and

---

1 Record of Proceedings ("ROP"), vol 1, p 418.

2 ROP, vol 2, p 681.

3 ROP, vol 2, p 665.

requested him to check whether some of the proposed company names were eligible for incorporation.[4]

11 Following Nadia's requests and her provision of certain documents,[5] the Appellant incorporated WEL on 14 December 2011. In the incorporation documents, the Appellant described the principal activities of WEL as "wholesale of parts and accessories for vehicles".[6] Marius-Antonio-Costel Sima ("Sima"), who held a Romanian travel document, was the sole shareholder. The Appellant and Sima were registered as the only two directors of WEL. The Appellant consented to be WEL's director without having met or spoken with Sima.[7]

12 On 18 December 2011, after the incorporation of WEL, Sima and Nadia came to Singapore whilst the Appellant was overseas.[8] Sima signed a Form 45 to document his consent to be a director of WEL as well as a "Minutes of First Director's Meeting", which purportedly documented a directors' meeting taking place between Sima and the Appellant on 19 December 2011, despite the latter's absence.

13 The Appellant and Sima also certified as true an extract of resolutions, which authorised Sima to be the sole signatory of WEL's bank accounts and the only person who had authority to open or close any of WEL's accounts with the banks and to apply for or terminate any of the services available from the banks.[9]

4 ROP, vol 2, pp 663–665.

5 ROP, vol 1, p 451.

6 ROP, vol 2, p 295 (P30).

7 ROP, vol 1, p 526.

8 ROP, vol 1, p 505.

9 ROP, vol 2, pp 613–615 (P46).

Both Sima and Nadia then left Singapore and neither of them returned to Singapore thereafter.

14 On 9 January 2012, the Appellant opened bank accounts for WEL with United Overseas Bank Limited ("UOB").[10] In particular, a UOB Corporate Global Currency Account bearing account number XXX-XXX-XXX-X ("WEL's account") was approved on the same day in accordance with the mandate provided in the above-mentioned resolutions. The account had a starting balance of US$1,001.53. Subsequently, the Appellant sent to Sima the cheque book and the internet banking token to access WEL's account via courier to a Romanian address.[11]

15 On 2 February 2012, the Appellant gave one statement to Investigating Officer Lim Dewei ("PW9") of the Commercial Affairs Department ("the CAD") for the purposes of investigating money laundering allegations against Kassar.[12] The Appellant was in fact informed by PW9 that he was conducting an investigation into an offence under s 47(1)(*b*) of the CDSA. The Appellant clearly was aware that Kassar was being investigated for money laundering offences under the CDSA. At the trial below, the Appellant did not challenge the voluntariness and accuracy of this statement. By the time this statement was taken, the Appellant also knew that OCBC had closed Kassar's account.[13] Two other bank accounts of Kassar with HSBC were also subsequently closed by HSBC in late February or early March 2012[14] and the Appellant was aware of this.[15]

---

10 ROP, vol 2, pp 501–505 (P37).

11 ROP, vol 2, p 305 (P31 at A49).

12 ROP, vol 2, pp 617–627 (P47).

13 ROP, vol 2, p 624 (P47 at A46) and ROP, vol 1, p 342.

16 On 9 March 2012, one Kho Kian Koen ("PW11") visited the registered premises of Kassar, in relation to a payment he had made to Kassar.[16] PW11 informed the Appellant that this was a mistaken payment to Kassar, and requested for this payment to be returned.[17] The Appellant then issued a cheque to PW11, which was eventually dishonoured.

17 There were no activities in WEL's account from 9 January 2012 (the date it was opened) to 29 March 2012. The account became very active from 30 March 2012, following which numerous deposits and withdrawals took place.[18] WEL's account was eventually closed on 31 May 2012. On the Appellant's part, he scanned and emailed the bank statements relating to WEL's account to Nadia, as previously agreed.[19]

18 From the many transactions in WEL's account, six deposits ("six deposits") and six corresponding withdrawals ("six withdrawals") became the subject of the CDSA charges. It is to be noted that the withdrawals do not correspond directly to the deposits because these illicit deposits were commingled with other funds in WEL's account. Thus, the weighted average method was used by the Prosecution to account for monies that had been commingled.[20] The six illicit deposits of stolen properties that were immediately transferred out of WEL's account (within one to three days) are set out in the following table:[21]

---

14 ROP, vol 1, p 342.

15 ROP, vol 1, pp 564-565.

16 ROP, vol 1, pp 392–393.

17 ROP, vol 2, pp 672–675 (P52).

18 ROP, vol 2, pp 382–393 (P33).

19 ROP, vol 2, pp 305–306 (P31).

20 GD at [46].

	Deposits			**Withdrawals**		
S/N	Date	Depositor	Amount (US$)	Date	Remitted to	Amount (US$)
1	11 Apr 2012	Franz Gradnig, Austria	15,570.70	13 Apr 2012	Shock Absorber Co Ltd, China	27,500.00
2	16 Apr 2012	Amano Fisheries Enterprises, Singapore	10,000.00	18 Apr 2012	Silver Foods, Morocco	20,600.00
3	26 Apr 2012	Moon Trading Co., Ltd, Sudan	43,016.90	27 Apr 2012	Rimo Auto Sales, USA	150,000.00
4	3 May 2012	Vivianne Vinet, Canada	135,991.88	4 May 2012	OCTA Management SA, Geneva	250,000.00
5	8 May 2012	Meng Chong Foodstuffs Pte Ltd, Singapore	28,377.50	9 May 2012	EFS European Financial Services Limited, Abu Dhabi	100,000.00
6	25 May 2012	Leo International Trading Pte Ltd, Singapore	88,997.53	28 May 2012	Billion Tech Corporation Limited, Hong Kong	89,200.00
			Total: 321,954.51			**Total**: 637,300.00

19 During this period, the Appellant received seven recall notices from UOB between 12 April 2012 and 24 May 2012 ("the recall notices") (see [130] below) in respect of the six deposits.[22] The Appellant scanned and emailed these

---

21 Prosecution's Skeletal Submissions at para 21.

22 ROP, vol 2, pp 605–612 (P45).

notices to Nadia and asked her to deal with these notices.[23] However, Nadia did not reply to these emails.[24]

20 On 4 June 2012, U Sun Tint ("PW2"), a director of Leo International Trading Pte Ltd, who made the sixth deposit, headed to the Appellant's office.[25] PW2 informed the Appellant that he had mistakenly remitted money into WEL's account and requested for a return of the money. The Appellant told PW2 that the main person in charge of these matters was in Europe[26] and then reported this incident to Nadia.[27] Nadia responded by asking the Appellant to directly contact "the owner", *ie*, Sima.[28] Sima then asked for time to check on the matter but the matter was still unresolved.

21 Eventually, on 15 August 2013, WEL was struck off on the application of the Appellant to the Registrar of Companies.

The decision below

22 The District Judge determined the following six issues in the decision below:[29]

(a) whether the six deposits were stolen properties for the purposes of s 411 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code");

---

23 ROP, vol 2, p 307 (P31 at A60 and A61).

24 ROP, vol 2, p 307 (P31 at A62).

25 ROP, vol 2, p 307 (P31 at A62).

26 ROP, vol 1, pp 78–79.

27 ROP, vol 2, p 30 (P10).

28 ROP, vol 2, p 32 (P10).

29 GD at [5].

(b) whether WEL dishonestly received these stolen properties, having reason to believe that the six deposits were stolen properties;

(c) whether WEL transferred in whole or in part the stolen properties out of its account;

(d) whether the transfers by WEL of the stolen properties were attributable to the Appellant's neglect as an officer of WEL;

(e) what was the standard of diligence required of the Appellant as a director of WEL; and

(f) whether the Appellant breached the standard required of him as a director of WEL.

23 Issues (a)–(c) concern the broader question of whether WEL has committed the money laundering offences, *ie*, the predicate offences. If established, Issue (d) addresses the question of whether the Appellant should, as an officer of WEL, be held criminally liable for these predicate offences. Issues (e) and (f) concern the CA charge.

24 On Issues (a)–(c), the District Judge found the following:

(a) The six deposits were stolen properties for purposes of s 411 of the Penal Code because the six victims had been deceived to make these deposits into WEL's account.[30]

(b) WEL dishonestly received the six deposits having reason to believe that the six deposits were, in whole or in part, stolen properties.[31]

---

30 GD at [44].

WEL's *mens rea* was derived from the *mens rea* of its agents or servants through whom it acted.[32] These agents or servants included Sima, Nadia, the Appellant and/or any other persons permitted by them to use WEL's account to receive the stolen properties. Even if the Appellant's state of mind was considered in isolation, it was adjudged sufficient to impute to WEL the requisite *mens rea* of dishonestly receiving stolen properties and laundering these monies. The Appellant was wilfully blind to the fact or at least had reason to believe that WEL was involved in the receipt of stolen properties.[33] Further, as nominee director, the Appellant was also imputed with the knowledge of his principals, *ie*, Sima or Nadia, for whom he had acted without any discretion or volition.[34]

(c) The six withdrawals which were the subject of the CDSA charges contained funds, at least in part, from the six deposits which were stolen properties.[35]

25 On Issue (d), the District Judge found that WEL transferred its benefits of criminal conduct as a result of the Appellant's neglect. There was a gross lack of supervision by the Appellant over WEL's affairs, which allowed Nadia and Sima to have unfettered control over WEL and partake in their money laundering activities unimpeded.[36]

---

31 GD at [59] and [71].

32 GD at [52].

33 GD at [60] and [69].

34 GD at [70].

35 GD at [51].

36 GD at [82].

26 On Issue (e), the District Judge was of the view that the Appellant, as a nominee director of WEL with the background of a chartered accountant and experience as a director of 20 companies and a provider of corporate secretarial services was held to a higher standard of care and diligence than that of a reasonable director in his position.[37]

27 On Issue (f), the District Judge concluded that the Appellant failed to exercise reasonable diligence as a director of WEL. He put himself in the position of a dummy director, merely saw himself as a "tool for foreigners to satisfy the legal requirement for a local director" and failed to exercise any supervision over WEL's affairs. He did not take any steps to inform himself of WEL's affairs before and in the light of the various "red flags" that appeared.[38]

28 The District Judge's determination of the following issues led to the Appellant's conviction on both the CDSA charges as well as the CA charge.

29 On the issue of sentence for the CDSA offences, the District Judge found that the primary sentencing consideration for offences involving money laundering was general deterrence.[39] In particular, he was of the view that the following factors warranted a custodial sentence for the CDSA offences:[40]

(a) the offences were a clear abuse of the processes facilitating the incorporation of companies by foreigners in Singapore;

---

37 GD at [75].

38 GD at [77]–[78] and [81].

39 GD at [94].

40 GD at [96]–[100].

(b) the Appellant's egregious breach of director's duties by placing himself as a "mere dummy director", who had no intention of fulfilling his duties as a director;

(c) the Appellant was motivated solely by financial gain;

(d) the outward transfers concerned large amounts; and

(e) the offences were of global reach as the victims hailed from four different continents.

30 In determining the length of imprisonment for each of the CDSA offences, the District Judge considered that the Appellant's culpability could be likened to that of an "individual money mule" since the Appellant knew or had reason to believe that the six deposits into WEL's account were stolen properties.[41] Accordingly, he determined the Appellant's imprisonment sentences by directly pegging them to the benchmark sentences received by "individual money mules" for similar amounts of money.[42] To determine the sentencing band for the respective charges, the District Judge used the quantum of the inward illicit deposits, even though the amounts reflected in the CDSA charges were the outward transfers.[43] He preferred this approach so that the Appellant would only be sentenced for the inward transfer of stolen properties instead of the withdrawals (which included stolen properties as well as other funds, the sources and legitimacy of which were unknown).

---

41 GD at [101].

42 GD at [102] and [104].

43 GD at [103].

31 As for the CA offence, the District Judge determined that the custodial threshold was crossed and distinguished the precedents where fines were imposed on the basis that the present case raised serious public policy considerations, affecting the wider financial system as a whole.[44] In determining the duration of imprisonment, he took into account the high value of the stolen properties received and sentenced the Appellant to four weeks' imprisonment.[45] In view of the serious lapses in the Appellant's duties as a director, he also ordered the disqualification of the Appellant as a director for five years (effective from the date of his release from prison) under s 154(4)(*b*) of the CA ("the disqualification order").[46]

32 For the global sentence, the District Judge again emphasised the need for general deterrence and decided that the sentences for the CA offence and two of the CDSA offences with the highest imprisonment terms should run consecutively, rendering an aggregate sentence of 26 months and four weeks' imprisonment.[47]

33 Lastly, the District Judge granted the order for costs sought by the Prosecution on the basis that the Appellant had extravagantly and unnecessarily conducted his defence.[48] However, he only ordered costs in respect of the expenses incurred in securing the attendance of the witnesses for the trial and the cost of translating the documents furnished by Dr Franz Gradnig, *ie*, a total of S$3992.74 ("the costs order"). He declined to order costs for the live

---

44 GD at [105].

45 GD at [106].

46 GD at [105]–[106].

47 GD at [107].

48 GD at [109].

transcription as this was something that the Prosecution opted for despite the availability of recording facilities in the State Courts.[49]

Arguments on appeal

34 Other than to highlight the gist of the arguments on appeal, I do not propose to summarise all the submissions made by the parties at this juncture and will instead address the relevant submissions in the course of my reasoning and analysis.

35 In the appeal against conviction, the Appellant argues that Issues (d)–(f) were incorrectly determined by the District Judge. With respect to Issues (a)–(c), the Appellant does not take issue with the District Judge's determinations other than to point out that the Appellant was not wilfully blind to, or did not have reason to believe, the fact that WEL was involved in the receipt of stolen properties.

36 In the appeal against sentence, the Appellant argues that a fine is the more appropriate punishment for both the CA and CDSA offences because the *mens rea* of the offences is only that of negligence and the District Judge was wrong to equate the culpability of the Appellant to that of an "individual money mule". In the event that a custodial sentence is imposed, the Appellant submits that the lowest two imprisonment sentences for the CDSA offences should run consecutively.

37 Separately, the Appellant also argues that the District Judge was wrong in awarding the costs order because it is the right of every offender to claim trial and oblige the Prosecution prove its case beyond a reasonable doubt. The

[49] GD at [109].

Appellant takes no issue with the disqualification order imposed by the District Judge.

38 Unsurprisingly, the Prosecution disagrees with the Appellant on all the above-mentioned points. In particular, the Prosecution seeks to uphold the District Judge's finding that a custodial sentence was warranted in this case because the Appellant knew or had reason to believe that WEL was in receipt of stolen properties.

39 Due to the novelty and the complexity of the matters which were raised (see [1] above), the court appointed Mr Foo as *amicus curiae* to submit on the following issues:

(a) What are the relevant sentencing considerations for an offence under s 157 of the CA?

(b) Taking into account these sentencing considerations, in what circumstances will the custodial threshold be crossed?

My decision

40 Having considered the GD, the parties' submissions and the evidence, I dismiss the Appellant's appeal against conviction but allow in part his appeal against sentence. I will reduce his aggregate term of imprisonment to 12 months and impose an additional fine of S$50,000 (in default ten weeks' imprisonment). I also allow the Appellant's appeal against the costs order. The disqualification order granted by the District Judge remains. My reasons are as follows.

Appeal against conviction

41 There are three main issues to be determined in the appeal against conviction:

(a) Is a conviction of the body corporate a prerequisite to a conviction under s 59(1) of the CDSA?

(b) Were the money laundering offences committed by WEL attributable to the Appellant's neglect as an officer of WEL?

(c) Has the standard of reasonable diligence under s 157(1) of the CA been breached?

Prerequisites to conviction under s 59(1) CDSA

42 The Appellant submits that the Appellant can only be convicted under s 59(1) of the CDSA after the company has been prosecuted and convicted of the predicate offences under s 47(1) of the CDSA. I disagree with this submission. It is not necessary for a body corporate to be first convicted before an officer of the body corporate can be lawfully convicted under s 59(1) of the CDSA. All that is required is for the Prosecution to establish that the body corporate has committed an offence under the CDSA.

43 The relevant provisions of the CDSA are as follows:

> **Acquiring, possessing, using, concealing or transferring benefits of criminal conduct**
>
> **47.**—(1) Any person who —
>
> (*a*) conceals or disguises any property which is, or in whole or in part, directly or indirectly, represents, his benefits from criminal conduct;
>
> (*b*) *converts or transfers that property* or removes it from the jurisdiction; or

> (*c*) acquires, possesses or uses that property,
>
> shall be guilty of an offence.
>
> (2) Any person who, knowing or having reasonable grounds to believe that any property is, or in whole or in part, directly or indirectly, represents, another person's benefits from criminal conduct —
>
> (a) conceals or disguises that property; or
>
> (b) converts or transfers that property or removes it from the jurisdiction,
>
> shall be guilty of an offence.
>
> …
>
> **Offences by bodies corporate, etc.**
>
> **59.**—(1) Where an offence under this Act committed by *a body corporate* is ***proved*** —
>
> [emphasis added in italics and bold italics]

44 In my view, the word "proved" in s 59(1) of the CDSA simply means that sufficient evidence is available to satisfy the court that an offence has been committed by the body corporate and there are no relevant defences to exculpate the body corporate. If Parliament truly intended for the body corporate to be convicted first before its officers can be convicted, the provision would have read instead: where a body corporate has been *convicted* of an offence under this Act. The Appellant's interpretation requires one to read "proved" as "convicted" which goes against the plain reading of the statute.

45 Treating the absence of a conviction of a body corporate as a bar to convicting its officers can also lead to absurd results. For instance, if the body corporate has become defunct by the time investigations are completed, this will mean that its officers will enjoy impunity, especially in a case where they have chosen to shut down the body corporate just so as to avoid prosecution. That clearly cannot be right.

46 During the hearing of this appeal, Mr Foo also agreed with this interpretation. I am very grateful to Mr Foo who was able on my request to perform some research and analysis of the legislative history of this provision during the lunch break (even though this question was not strictly referred to him as *amicus curiae*). In this regard, Mr Foo pointed out that parliamentary intention is silent and highlighted however that similar wording is found in numerous other criminal legislation in Singapore, *eg*, s 17(1) of the Undesirable Publications Act (Cap 338, 1998 Rev Ed) and s 11(1) of the Hostage-Taking Act (Cap 126C, 2011 Rev Ed). He then referred to a provision in the UK that is *in pari materia* with s 59(1) of the CDSA and related academic commentary on it.

47 Section 1255(1) of the Companies Act 2006 (c 46) (UK) reads:

> **1255 Offences by bodies corporate, partnerships and unincorporated associations**
>
> (1) Where an offence under this Part 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, an officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

48 Interpreting this provision, English jurists have commented as follows in Amanda Pinto QC & Martin Evans, *Corporate Criminal Liability* (Sweet & Maxwell, 3rd Ed, 2013) at p 75:

> Despite, the title of the section, *it is unnecessary for the company itself to be prosecuted, provided it can be proved on the evidence that it committed the offence*. So, if a corporation has been wound up before trial, or for some other reason has not been prosecuted, it *would not be a bar to proceeding against appropriate individuals*. It would, however, be a condition precedent to the conviction of an individual for the prosecution to prove the guilt of the corporation, including disproving any corporate defence such as due diligence.
>
> Similar wording appears in many statutes across the spectrum of criminal and regulatory legislation. The purpose is to prosecute and punish not only the corporation but those who are in control and hide behind the veil of incorporation.
>
> [emphasis added]

49 This fully echoes my views expressed above. Applying this approach, the Prosecution has clearly established the commission of an offence by WEL under the CDSA. The District Judge found beyond a reasonable doubt that the monies transferred out of WEL's account were stolen properties at least in part.[50] Since the Appellant does not dispute this finding, this is sufficient for me to conclude that the Prosecution has "proved" that WEL committed an offence under s 47(1)(*b*) of the CDSA, *ie*, it transferred monies which were in whole or in part its benefits of criminal conduct out of its account. Even if an offence under s 47(1)(*b*) of the CDSA is not proved, I find that at the very least, an offence under s 47(2)(*b*) of the CDSA has been proved. The main difference between these two offences is that the latter concerns the benefits of *another* person's criminal conduct. Thus even if the stolen properties were not WEL's own benefits from criminal conduct but Nadia's and/or Sima's benefits, the District Judge found beyond a reasonable doubt that WEL *knew or had reasonable grounds to believe* that the six deposits which were paid into its

---

[50] GD at [51].

account were stolen properties (regardless of who had stolen them). The elements of s 47(2)(*b*) of the CDSA are therefore satisfied.

50 Accordingly, either on the basis of s 47(1)(*b*) or s 47(2)(*b*) of the CDSA, an offence has been "proved" to be committed by WEL, triggering the operation of s 59(1) of the CDSA in relation to the Appellant as an officer of WEL.

Attributable to the Appellant's neglect

51 The primary issue to be determined in relation to the CDSA charges is whether the offences committed by WEL are attributable to any neglect on the part of the Appellant under s 59(1)(*b*) of the CDSA.

52 Section 59(1) of the CDSA reads:

> **Offences by bodies corporate, etc.**
>
> **59.**—(1) Where an offence under this Act committed by a body corporate is proved —
>
> (*a*) to have been committed with the consent or connivance of an officer; or
>
> (*b*) *to be attributable to any neglect on his part*,
>
> the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
>
> [emphasis added]

53 The District Judge found that the Appellant was negligent as he had placed himself in the mere position of "a dummy director of WEL" by relinquishing complete control of WEL. He gave Nadia and/or Sima unfettered access to and control over WEL's affairs.[51] The District Judge thus found that:

---

[51] GD at [77].

> 78. [The Appellant] did not take any steps to inform himself of the affairs of WEL. He was in no position to guide and monitor its business. His role was limited to scanning the bank statements and other correspondences and emailing them to Nadia. No evidence was adduced that Nadia and/or Sima were required to inform him of the activities of WEL to enable him to maintain proper oversight of WEL. It was clear that [the Appellant] did not exercise any supervision over WEL's affairs.

54 The District Judge then concluded that WEL's offence arose as a result of the Appellant's neglect, *ie*, the offence was attributable to the Appellant's neglect as an officer of WEL:

> 82. There was a gross lack of supervision by [the Appellant] over the affairs of WEL. This had allowed Nadia and Sima to have free rein over WEL and they were able to continue with their money laundering activities unhindered. This had led to WEL receiving the six deposits.

55 On appeal, the Appellant seeks to challenge these findings of fact made by the District Judge on two fronts. First, the Appellant was not *negligent* in the discharge of his duties as he was employed to act only as a local resident director in a purely non-executive capacity. The Appellant was thus not in the best position to effectively monitor and supervise WEL's operations and affairs.[52] Second, the Appellant argues that WEL's commission of the money laundering offences in transferring out the six deposits is not *attributable* to the Appellant's neglect.[53] This is because the Appellant had no means to stop these transfers given that all rights to the bank accounts were assigned to Sima as the sole signatory.[54] Further, since in all of the fund transfers except the first instance, the Appellant received the recall notices only after the funds had been transferred out of WEL's account, the Prosecution has failed to establish what

---

52 Appellant's Skeletal Submissions at para 94.

53 Appellant's Skeletal Submissions at paras 121–129.

54 Appellant's Skeletal Submissions at para 106.

exactly the Appellant could have done to prevent the outward transfers of the six deposits.[55]

56 I disagree with this submission on both counts. In explaining my reasons for doing so, I shall first set out the proper interpretation to be given to the words "neglect" and "attributable to" and then apply it to the facts of the present case.

Proper interpretation of "neglect"

57 The District Judge,[56] the Appellant[57] as well as the Prosecution[58] appear to treat the words "any neglect on his part" in s 59(1)(*b*) of the CDSA as importing the same obligation as that to "use reasonable diligence in the discharge of his office" in s 157(1) of the CA. In my view, however, I do not think it is right to conflate these two distinct concepts as the latter is a far more general obligation than the former. The key inquiry of the requisite neglect in s 59(1)(*b*) of the CDSA is a more specific one that is pegged to the commission of the offence in question by the body corporate.

58 This interpretation is supported by a survey of the UK jurisprudence. In *Wotherspoon v HM Advocate* [1978] JC 74 ("*Wotherspoon*"), the applicant had been found guilty of two charges under s 37(1) of the Health and Safety at Work etc Act 1974 (c 37) (UK) in respect of the absence of fencing around certain parts of several machines in a factory run by a company of which he was the managing director. He appealed on the ground that the presiding judge had

---

55 Appellant's Skeletal Submissions at para 122.

56 GD at [72]–[82].

57 Appellant's Skeletal Submissions at para 129.

58 Prosecution's Skeletal Submissions at para 85.

misdirected the jury by failing to give it any adequate guidance as to the meaning of the words "attributable to any neglect". In dismissing the appeal, the Lord Justice-General, Lord Emslie observed (at 78):

> … that *the word "neglect" in its natural meaning pre-supposes the existence of some obligation or duty on the part of the person charged with neglect.* Where that word appears in section 37(1) it is associated with certain specified officers of a body corporate or with persons "purporting to act in any such capacity". It is *any neglect on their part to which the commission of an offence within a specified category by a body corporate is attributable which attracts the penal sanction.* … [I]t seems clear that the section as a whole is concerned primarily to provide a penal sanction against those persons charged with functions of management who can be shown to have been responsible for the commission of a relevant offence by an artificial persona, a body corporate. Accordingly, in considering in a given case whether there has been neglect within the meaning of section 37(1) on the part of a particular director or other particular officer charged, the search must be to *discover whether the accused has failed to take some steps to prevent the commission of an offence by the corporation to which he belongs if the taking of those steps either expressly falls or should be held to fall within the scope of the functions of the office which he holds.* In all cases accordingly the functions of the office of a person charged with a contravention of section 37(1) will be a highly relevant consideration for any Judge or jury and the question whether there was on his part, as the holder of his particular office, a failure to take a step which he could and should have taken will fall to be answered in light of the whole circumstances of the case including *his state of knowledge of the need for action, or the existence of a state of fact requiring action to be taken of which he ought to have been aware.*
>
> [emphasis added]

59 These remarks were subsequently adopted by the English Court of Appeal case of *R v P* [2007] EWCA Crim 1937 ("*R v P*"), where Latham LJ expressed the view that the critical question is whether the officer *ought to have been aware* that he could and should have taken action to prevent the commission of the offence – action which he never did take although it was within the scope of his duties to do so – and not whether he *knew* of the commission of the offence but turned a blind eye to it. Thus, even if the officer

was unaware of the commission of the offence, if by reason of the circumstances and the nature and scope of his responsibilities, he *ought to have been put on inquiry*, he would be guilty of neglect if he failed to take the appropriate preventive action. In the words of Latham LJ (at [13]):

> The question, at the end of the day, will always be, as the Lord Justice General said in [*Wotherspoon*], whether or not it is proper, where there is no actual knowledge of the state of facts, nonetheless the officer in question of the company should have, by reason of the surrounding circumstances, been put on enquiry so as to require him to have taken steps to determine whether or not the appropriate safety procedures were in place. That will depend in every case on the evidence put forward by the prosecution in the first instance, and, if there is sufficient evidence to justify the matter going to the jury, the overall evidence, including that of the defendant, at the end of the trial.

60 In *R v P*, this meant that in order for the defendant to be convicted of a similar offence, it did not need to be established that the defendant had in fact known of the dangerous practice carried out in the company's factory in his capacity as managing director of the company; the relevant question was whether the facts were such that he should have been put on inquiry to check that appropriate safety measures were put in place in the factory.

61 These authorities were subsequently affirmed by the House of Lords in *R v Chargot Limited (t/a Contract Services) and others* [2008] UKHL 73 ("*Chargot*"), a case dealing with the same statutory provision. While Lord Hope of Craighead agreed that the essential inquiry is whether the officer should have been put on inquiry so as to take steps to prevent the offence, his Lordship emphasised that the facts which must be proved to establish that the officer's state of mind amounted to neglect varies from case to case. In particular, stronger evidence is required to prove or infer neglect where the activities comprising the offence were not under the officer's direction or control. It is instructive to set out Lord Hope's observations (at [33]–[34]) in full:

> … [T]he circumstances will vary from case to case. So no fixed rule can be laid down as to what the prosecution must identify and prove in order to establish that the officer's state of mind was such as to amount to consent, connivance or neglect. *In some cases, as where the officer's place of activity was remote from the work place or what was done there was not under his immediate direction and control, this may require the leading of quite detailed evidence of which fair notice may have to be given. In others, where the officer was in day to day contact with what was done there, very little more may be needed.* In *Wotherspoon v HM Advocate* 1978 JC 74, 78 Lord Justice General Emslie said the section is concerned primarily to provide a penal sanction against those persons charged with functions of management who can be shown to have been responsible for the commission of the offence by a body corporate, and that *the functions of the office which he holds will be a highly relevant consideration.* In *R v P Ltd* [2008] ICR 96 Lathan LJ endorsed the Lord Justice General's observation that the question, in the end of the day, will always be whether the officer in question should have been put on inquiry so as to have taken steps to determine whether or not the appropriate safety procedures were in place. I would too. …
>
> … The state of mind that the words "connivance" and "neglect" contemplate is one that may also be established by inference. … Where it is shown that the body corporate [committed the predicate offence], it will be a relatively short step for the inference to be drawn that there was connivance or neglect on his part *if the circumstances under which the risk* [to workplace safety, *ie*, the predicate offence] *arose were under the direction or control of the officer. The more remote his area of responsibility is from those circumstances, the harder it will be to draw that inference.*
>
> [emphasis added]

62 For completeness, I also note that the observations made in *Wotherspoon* and *Chargot* have been adopted and applied in Australia in relation to an *in pari materia* provision: see s 55(1) of the Occupational Safety and Health Act 1984 (WA) and the decision of the Court of Appeal of the Western Australian Supreme Court in *Fry v Keating* [2013] WASCA 109 at [28]–[31].

63 Based on the foregoing, the applicable principles may be summarised as follows. To prove neglect, it must be shown that the officer knew or ought to

have known of the existence of facts requiring him to take steps which fell within the scope of the functions of his role to prevent the commission of the offence by the company, and that he failed to take such steps. In assessing the state of his knowledge and the scope of action which he allegedly neglected to perform, the functions of his office will be a relevant consideration. The more remote his office from the facts surrounding the offence, the more difficult it is to infer that the officer was negligent, and hence stronger evidence would be required of the Prosecution.

Was the Appellant negligent?

64 In view of the above, the key question to be answered is whether, having regard to the functions of his office, the Appellant *ought* to have been aware that WEL was dealing with stolen properties such that he ought to have taken steps within his functions to prevent WEL's commission of the offences. It is thus no defence for the Appellant to claim (at [55] above) that he lacked actual knowledge of the fraudulent dealings of WEL.

65 I also reject the Appellant's submission (at [55] above) that the Appellant cannot possibly be negligent because he was a merely a local resident director who was not employed to supervise and manage WEL. The duties of a non-executive director are not dependent on the terms of his employment contract. The duties of a director (even a non-executive director) are imposed by the common law and statute and cannot be contracted away by any form of employment contract. It is antithetical for a person to agree to be a director on the condition that he will not exercise *any* form of supervision or control over the affairs of the company. Whilst I can accept that a non-executive director is not obliged to keep constant tabs on his company, I cannot accept that he can completely relinquish even the duty of having some minimal level of

supervision over the company's affairs. Therefore, although the limited functions of the Appellant's office are relevant to the question of neglect, it remains to be assessed whether the surrounding facts and circumstances ought to have made him aware of the predicate offences and whether there were steps he could have taken – even in his limited role – to ensure that WEL was not engaging in any criminal acts in contravention of the CDSA. In other words, it is not a conceptual impossibility that a non-executive director can be prosecuted and found guilty of an offence under s 59(1) of the CDSA; it depends on the facts arising in each case. Taking into account the fact that he was a non-executive director with no active management duties, stronger evidence is required to infer the requisite state of knowledge on his part before holding him accountable for the failure to take actions within the scope of the functions of his role to prevent the commission of the offence by the company.

66 In my view, the surrounding circumstances in the present case ought to have put the Appellant on inquiry that illicit activities were being carried out through WEL, such that the Appellant ought to have stepped up his supervision over WEL's activities. The following "red flags" highlighted by the District Judge support this conclusion:

(a) The Appellant was informed by SCB that it had rejected his application to open a corporate bank account for both Kassar and Lottus on the ground that checks done on the directors had not turned out quite well.[59] In a statement made to the police, the Appellant admitted that when SCB rejected his application, he had some suspicions about the companies introduced by Nadia

---

[59] GD at [61].

but chose to ignore it and proceeded to incorporate WEL and Mega Zone.[60]

(b) The closure of Kassar's account with OCBC by the bank and the rejection of the Appellant's application to open an account with OCBC for WEL.[61]

(c) The existence of multiple discrepancies in the name, address and contact details of Sima.[62]

(d) The receipt of several recall notices from UOB from 12 April to 24 May 2012 (see below at [130]).

(e) The withdrawal of US$55,000 on 16 April 2012 from WEL's account was remitted to "EB Silver Food" which "should have … placed [the Appellant] on alert because WEL was not in the business of food or food products".[63]

67 In addition to these "red flags", the investigations carried out by the CAD into the activities of Kassar and the Appellant's knowledge of these investigations prove the matter beyond reasonable doubt that the Appellant ought to have made inquiries into WEL's activities. In fact, the Appellant himself admitted during cross-examination by the Prosecution that he was aware of the possibility that WEL might also be used to engage in illicit activities:[64]

---

60 GD at [61].

61 GD at [62].

62 GD at [63].

63 GD at [67].

64 ROP, vol 1, p 564.

> Q: When you asked questions about closure of accounts, you also are concerned that no more funds from the account can be remitted out.
>
> A: Your Honour, I -- like I say, I was concerned about the investigation on Kassar. If -- I do not know exactly what happened in Kassar in the first place and, like I say, if I want -- if -- *there are possibilities that it may happen to the other companies*. As you see also from the bank statement, the first few months in World Eastern, there is no transaction in the first place. When [PW9] came to my office in February, in February there is no transaction. So, if it could -- *there is a possibility that it may happen to other companies*, in Kassar and also in -- okay, what are my course of action, what can I do in the first place.
>
> [emphasis added]

68 This worry was also communicated by the Appellant to PW9 during an interview held by CAD on 2 February 2012 where the Appellant expressed concerns to PW9 that other companies might also possibly be involved in illegal activities. This is evident from the following oral testimony of the Appellant under cross-examination by the Prosecution:[65]

> A: … I asked [PW9] -- I didn't ask specifically about closing of bank account. I asked basically what I can do about -- given that there is an investigation on Kassar, *what is my course of action for Kassar and also if it involve other companies, what are my course of action for the other companies in the first place.*
>
> [emphasis added]

69 The fact that the Appellant had the presence of mind to connect the investigations relating to Kassar with WEL, presumably on the basis that all these companies were introduced to him as a client by the same person, *ie*, Nadia, is very telling as to his state of mind. The fact that he was highly suspicious by this time buttresses and lends weight to the conclusion that he

---

[65] ROP, vol 1, p 561.

ought to have known that WEL might also be involved in illegal activities which calls for the need to take some action on his part as an officer of WEL.

70 However, despite the state of his knowledge of these facts and circumstances that clearly called for him to make inquiries, the Appellant neglected to take any active steps to take investigative and/or preventive action, which he ought to have done. Being in constant contact with Sima and Nadia, it would have taken only an email from him to ask questions on the activities of WEL, the reasons for the closure of Kassar's bank accounts and the multiple funds recall notices. In spite of his experience as the director of 22 other companies and a chartered accountant for many years, he chose not to do *anything* at all. As correctly found by the District Judge:

> 81. As director, [the Appellant] had the duty to make inquiries in light of the various red flags ... It was incumbent that he ensured that WEL was compliant with the law. He should have also taken active steps to ensure that WEL did not receive and transfer stolen property ... the [Appellant] had done nothing and treated everything as business as usual. He could have, and should have asked Nadia and Sima questions. Even when he did so on the rare occasion, he did not press for a response when none was forthcoming. He could have taken steps to strike off WEL. He could have alerted the authority. Yet he did none of these things.

71 Each of the steps outlined above were within the scope of the Appellant's functions as a local resident director, even though he was a non-executive director and was uninvolved in the day-to-day operations of WEL (assuming such operations even existed). Being the only local director, he was required to exercise reasonable diligence to ensure that the company was not engaging in any acts in contravention of the law in Singapore, especially where he had notice of sufficient facts before him to raise alarm bells as to the propriety of WEL's activities. This failure to take any active steps whatsoever which was his duty to take in the circumstances is what renders the Appellant's conduct

negligent. It is precisely such conduct that s 59(1)(*b*) of the CDSA is meant to prohibit and deter. In fact, the evidence reveals that the Appellant simply did not care what WEL did, as demonstrated by the completely cavalier fashion in which he acted despite the state of his knowledge of the facts and circumstances that clearly called for him to take action.

72 Before I leave this point, I find myself compelled to make a brief observation regarding the conclusion made by the District Judge that the Appellant was "wilfully blind to the fact or at least had reason to believe that WEL was involved in the receipt of stolen monies".[66] This is not the relevant inquiry for the purposes of the offences committed by the Appellant. Since the Prosecution has chosen to specify s 47(1)(*b*) as opposed to s 47(2)(*b*) of the CDSA (see above at [49]) as the predicate offence in the CDSA charges faced by the Appellant, there is no need for there to be a finding of fact that WEL knew or had reason to believe that the properties were stolen. This finding of fact only has to be made where the charge is under s 47(2)(*b*) which requires the offender to "[know] or [have] reasonable grounds to believe" that the property is or represents another person's benefits from criminal conduct. In contrast, for a conviction under s 47(1)(*b*) of the CDSA (transfer of benefits of one's *own* criminal conduct, here WEL's criminal conduct), which is what is specified in the CDSA charges, such a finding need not be made.

73 As I have described above, all that is required for convicting the Appellant of the six CDSA charges is that he *ought to have known* that WEL was dealing with stolen properties. No other *mens rea* is required. In any event, I have some reservations as to whether the Appellant can be said to have been "wilfully blind" or to have "had reason to believe" that WEL was dealing with

---

[66] GD at [60].

stolen properties in respect of *all* the six CDSA charges as opposed to only some of these charges. Since my conclusion on this point goes only to the question of sentence for the different CDSA offences and has no impact on the conviction on these charges, I will elaborate on this point below in the context of the Appellant's sentences for the CDSA offences.

Proper interpretation of "attributable to"

74 Since the Appellant was negligent in relation to the offences committed by WEL, the next issue is whether these offences were *attributable to* his neglect. There are several possible interpretations that can be accorded to the words "attributable to" in s 59(1)(*b*) of the CDSA:

(a) primary causation;

(b) "but for" causation; or

(c) mere simple causation, *ie*, one of the reasons for the eventuality.

75 The case of *Wotherspoon* preferred the interpretation of a mere simple causation (at 78):

> … the words "attributable to" … are not qualified in the subsection or the statute by such words as "wholly or mainly" or in any other way. In our opinion any degree of attributability will suffice and in that sense it is evident that the commission of a relevant offence by a body corporate may well be found to be attributable to failure on the part of each of a number of directors, managers or other officers to take certain steps which he could and should have taken in the discharge of the particular functions of his particular office.

76 For the reasons given by the court in *Wotherspoon*, I agree that any degree of attribution will be sufficient to make out the charge. What matters is whether the officer could and should have taken steps to prevent the offence;

not whether any steps if taken by the officer will more likely than not or most definitely have prevented the commission of the offence. In my view, this interpretation is in line with Parliament's intent of holding officers criminally liable for the actions of corporate bodies that they manage or control.

Were the offences committed by WEL attributable to the Appellant's neglect?

77 On the facts of this case, I agree with the District Judge that the offences committed by WEL were attributable to the Appellant's neglect. In view of the points made above, it does not have to be conclusively shown that if the Appellant had taken active steps such as alerting the relevant authorities and the bank, or making a police report, the offences would not have materialised. All that the Prosecution has to show is that if the Appellant had not been negligent, the offence *may* have been prevented. This is clearly proven on the facts of this case given that if the Appellant had for instance made a police report in February 2012, it is entirely possible that WEL's account could have been frozen before the money laundering transactions took place between April and May 2012.

78 On this point, it leaves me now to address the Appellant's argument (at [55] above) that the Appellant could not have stopped the six withdrawals because he was not a signatory of WEL's account and he only knew of most of the deposits through the recall notices after these monies had already been withdrawn. Even if I accept the factual accuracy of this argument, this argument entirely misses the point as to when the necessary steps should have been taken by the Appellant. As I have alluded to above (see [64]–[71] above), the Appellant should have already taken these steps as early as February 2012, two months before he received the first recall notice. If he had done so, it is possible that the offences *may* been prevented. Accordingly, the offences committed by WEL are attributable to the Appellant's neglect.

79 For these reasons, I dismiss the Appellant's appeal against conviction on all the six CDSA charges.

Reasonable diligence under s 157(1) CA

80 The Appellant also appeals against the conviction in respect of the CA charge. This charge is distinct from the CDSA charges in that it concerns the Appellant's failure to exercise any supervision over WEL's affairs which resulted in WEL receiving stolen properties in contravention of s 411 of the Penal Code. Thus, it is concerned with the *receipt* of the six deposits rather than the outward transfers via the six withdrawals, which were instead the subject matter of the CDSA charges.

81 The key issue in dispute with respect to the CA charge is whether the Appellant breached his duty to exercise reasonable diligence in the discharge of his duties under s 157(1) of the CA. This requires first a determination of the requisite standard the Appellant is held to under the CA.

Standard of reasonable diligence expected of the Appellant

82 The District Judge held that a higher standard of care and diligence is required of the Appellant because of his background as a chartered accountant providing corporate secretarial services and his experience as a director of 22 other companies at the relevant time.[67]

83 The Appellant contends that the District Judge erred in applying a higher standard of care to him because he should only be held to the standard expected of a "reasonable 'resident director of companies whose directors are not

---

[67] GD at [75] and [98].

ordinarily resident in Singapore'".[68] The Prosecution contends that the District Judge correctly took into consideration the skill and experience that the Appellant possessed and correctly found that this skill and experience would raise the standard of care that was expected of the Appellant as a director.[69] I agree with the Prosecution's view that the requisite standard expected of the Appellant cannot be blind to the skills and experience that he possessed.

84 To start off, s 157(1) of the CA reads:

> **As to the duty and liability of officers**
>
> **157.**—(1) A director shall at all times act honestly and use *reasonable diligence* in the discharge of the duties of his office.
>
> [emphasis added]

85 The requisite standard under this provision was authoritatively decided by Yong Pung How CJ in *Lim Weng Kee v Public Prosecutor* [2002] 2 SLR(R) 848 ("*Lim Weng Kee*"): the standard of care expected of a director is of the "same degree of care and diligence as a reasonable director found in his position" (at [28]). However, the standard is "not fixed but a continuum" depending on various factors such as the individual's role in the company, the experience or skills that the director held himself out to possess in support of his appointment to the office, and the size and business of the company (see *Lim Weng Kee* at [28]; approving of the decision in *Daniels v Anderson* [1995] 118 FLR 248 at 310). This standard was also subsequently approved by the Court of Appeal in *Ho Kang Peng v Scintronix Corp Ltd (formerly known as TTL Holdings Ltd)* [2014] 3 SLR 329 ("*Ho Kang Peng*") at [42]. Indeed, in finding that the appellant had breached his duty to exercise care, the Court of Appeal in

---

68 Appellant's Skeletal Submissions at para 44.

69 Prosecution's Skeletal Submissions at para 60.

Ho Kang Peng took into account the appellant's status as a director of at least ten other Singapore-incorporated companies (at [43]).

86 Thus, it is clear to me from these authorities that the skills and experience held out by the Appellant as a chartered accountant and a veteran local resident director cannot be ignored in determining the standard he should be held accountable to.

87 Additionally, the Appellant contends that local resident directors are not expected to take steps to ensure that their company scrupulously obeys the laws because they are engaged for the sole purpose of fulfilling the local statutory requirements.[70] In support of this proposition, the Appellant relies on the recent decision of Kannan Ramesh JC (as he then was) in *Prima Bulkship Pte Ltd (in creditors' voluntary liquidation) and another v Lim Say Wan and another* [2016] SGHC 283 ("*Prima Bulkship*").[71] The directors in that case were similarly appointed to fulfil the statutory requirement that a Singapore-incorporated company must have a local resident director. In this vein, the Appellant relies on the following observations in *Prima Bulkship*:

> 45 … As the Companies were incorporated in Singapore, they are statutorily required to appoint a director ordinarily resident in Singapore (the Purchasers were non-Singaporeans and RP Capital and RP Ventures were Malaysian companies). Thus, the Defendant Directors were approached to take up this role at a rate of S$2,000 per annum. This is a common practice in the industry. Such directors typically do not play an active or executive role in the company, and their main function is to ensure that the company complies with the statutory requirements of local resident director. They also do not engage in or shoulder responsibility for commercial decision making, discharging the role of a director more in form than in

---

70 Appellant's Skeletal Submissions at para 51.

71 Appellant's Skeletal Submissions at para 54.

> substance. Hence, the use of the term "nominee" director to describe them.
>
> …
>
> 49 First, it is important to emphasise the role of the Defendant Directors in the Companies. They were appointed merely to fulfil the statutory requirement that the Companies appoint a local resident director. As mentioned above at [45], this is a practice that is prevalent. Such directors often do not have the relevant skills and/or expertise in the subject matter the company's business pertained to. Their main role is to ensure that the company complies with its statutory obligations and are rarely expected to participate in the commercial decisions of the company. These decisions and the management of the company are typically left to other more qualified persons (usually the parties who incorporated the company and intend to do business through the company). While this does not mean that the Defendant Directors are relieved of their duties of care, skill and diligence, it does impact the extent to which they are expected to be informed of the Companies' affairs.

88 In my view, the Appellant's reliance on *Prima Bulkship* is taken out of its context in the present case. Ramesh JC's observations were directed at the issue of civil liability of directors for losses suffered by their company. In *Prima Bulkship*, the local resident directors had simply acted on the directions of the shareholders in approving directors' resolutions in connection with the purchase of a ship. This contract to purchase eventually caused losses to the company in the form of damages payable to the seller of the ship. The company was subsequently placed under creditors' voluntary liquidation and the liquidator brought an action against these directors for breach of their directors' duties to act with reasonable diligence.

89 In such a case, it might very well be that local resident directors should not be held liable for breach of their duties of diligence in connection with *commercial* decisions made by the company; this is because it is not the role and purpose of non-executive local resident directors to make such decisions given that these *legitimate* business decisions are usually spearheaded by the

executive directors. In stark contrast, however, a local resident director, cannot simply be a "dummy director" who approves, ignores, or is nonchalant as to whether the company is engaging in any *illegal* activities. If it were otherwise, it would make an utter mockery out of the statutory requirement to have a local resident director because all a foreign company needs to do to circumvent any external supervision is to employ a dummy resident director and pay him enough money to keep his mouth sealed in order for the corporate shield of the company to be used for nefarious or illegal purposes.

90 Additionally, the Appellant (relying again on *Prima Bulkship*) also attempts to justify his inaction on the basis that the provision of such resident director services is a common practice in Singapore.[72] Whilst I accept that it is indeed a prevalent practice to offer such services, I am hesitant to conclude that it is also prevalent for most resident directors to act in such a nonchalant and cavalier fashion in which the Appellant had acted in the face of such obvious "red flags".

91 Even if I were wrong and most resident directors conduct themselves in a similar fashion, this common practice is not a ground to exculpate the Appellant. As was found in the English case of *Re D'Jan of London Ltd* [1993] BCC 646 by Hoffmann LJ (as he then was), even if the act of breach was a common practice amongst directors, it would still be considered negligent (at 648). In that case, an insurance company repudiated liability for fire at a company's premises on account of incorrect answers in an insurance proposal. In finding Mr D'Jan to be negligent and liable to the company because he failed to read the insurance proposal before signing it as a director of the company, Hoffman LJ opined thus at 648:

---

[72] Appellant's Skeletal Submissions at para 53.

> Nevertheless I think that in failing even to read the form, Mr D'Jan was negligent. Mr Russen said that the standard of care which directors owe to their companies is not very exacting and *signing forms without reading them is something a busy director might reasonably do. I accept that in real life, this often happens. But that does not mean that it is not negligent.* People often take risks in circumstances in which it was not necessary or reasonable to do so. If the risk materialises, they may have to pay a penalty. I do not say that a director must always read the whole of every document which he signs. If he signs an agreement running to 60 pages of turgid legal prose on the assurance of his solicitor that it accurately reflects the board's instructions, he may well be excused from reading it all himself. But this was an extremely simple document asking a few questions which Mr D'Jan was the best person to answer. By signing the form, he accepted that he was the person who should take responsibility for its contents.
>
> [emphasis added]

Breach of the standard of reasonable diligence

92 Having determined the requisite standard of care, the remaining question is whether the Appellant breached this standard. I agree with the Prosecution that the Appellant breached the standard of reasonable diligence expected of him. I reproduce relevant paragraphs from the Prosecution's written submissions with which I agree:

> 71. The Appellant in fact placed WEL out of his control and beyond his understanding of its affairs. Shortly after incorporating WEL, the Appellant relinquished financial control of WEL by sending the internet banking token and cheque books to Nadia and/or Sima.[73] His understanding of the business of WEL – supposedly the wholesale of vehicle parts and accessories – was limited to what was stated in the ACRA records.[74] He merely assumed that WEL was involved in genuine business of vehicle parts and accessories although he had never seen any evidence of such business activities, e.g. invoices, purchase orders or receipts.

---

73 ROP, vol 1, p 464.

74 ROP, vol 1, p 464.

> 72. The [District Judge] also concluded that the Appellant placed himself in the position of a dummy director in order to enable foreigners to incorporate companies in Singapore. A "dummy director" as stated in the case of *Francis v United Jersey Bank* 432 A 2d 814 (NJ 1981) ... at [308] - [309], is a director who is a mere figure-head without duty or responsibility. This conclusion is justified from the Appellant's abovementioned failure in his duties as director and by placing himself in the situations described above and at the disposal of Nadia, the Appellant did not intend at any point of his directorship of WEL, to fulfil his s 157(1) of the CA obligations to exercise reasonable diligence in WEL's affairs.

93 Given this completely cavalier attitude adopted by the Appellant in relation to WEL's affairs, it is clear beyond a reasonable doubt that the Appellant had failed to exercise any diligence, let alone reasonable diligence, as required of him as a director of WEL. I thus likewise dismiss the Appellant's appeal against conviction in respect of the CA charge.

Appeal against sentence

94 Having decided to dismiss the appeal against conviction for both the CA as well as the CDSA charges, I shall now turn to consider the Appellant's appeal against sentence. On this appeal, the key points in dispute between the parties are whether a custodial sentence is warranted and if so, what is the appropriate term of imprisonment for the offences committed.

95 I propose to first deal with the Appellant's appeal against sentence in relation to the offences under the CDSA, followed by the appeal in respect of the offence under the CA.

CDSA offences

Establishing the respective notional maximum terms of imprisonment

96 Since this is the first prosecution of an officer of a body corporate under s 59(1) of the CDSA, I shall endeavour in this judgment to establish some guidelines and benchmarks to guide future cases.

97 For ease of reference, I reproduce the relevant provisions in the CDSA:

> **Acquiring, possessing, using, concealing or transferring benefits of criminal conduct**
>
> **47.**—(1) Any person who —
>
> (*a*) conceals or disguises any property which is, or in whole or in part, directly or indirectly, represents, his benefits from criminal conduct;
>
> (*b*) converts or transfers that property or removes it from the jurisdiction; or
>
> (*c*) acquires, possesses or uses that property,
>
> shall be guilty of an offence.
>
> …
>
> (6) Any person who commits an offence under this section shall be liable on conviction —
>
> (a) if the person is an individual, to a fine not exceeding $500,000 or to imprisonment for a term not exceeding 10 years or to both; or
>
> (b) if the person is not an individual, to a fine not exceeding $1 million.
>
> …
>
> **Offences by bodies corporate, etc.**
>
> **59.**—(1) Where an offence under this Act committed by a body corporate is proved —
>
> (*a*) to have been committed with the consent or connivance of an officer; or
>
> (*b*) to be attributable to any neglect on his part,

> the officer as well as the body corporate shall be guilty of the offence and *shall be liable to be proceeded against and punished accordingly.*
>
> [emphasis added]

98 As is evident from the italicised text in these provisions, the punishment provision for an officer of a body corporate in s 59(1) of the CDSA ties back to the punishment provision of the primary predicate offence in s 47(6)(*a*) of the CDSA. In other words, whether it is an individual ("A") who commits the offence under s 47(1) of the CDSA, or a company that commits the predicate offence ("primary offender") for which the director ("B") is being held criminally liable ("secondary offender"), the maximum sentence that can be imposed is the same for both A and B, *ie*, a fine of S$500,000 and ten years' imprisonment.

99 However, it must be emphasised that in relation to a secondary offender, s 59(1) of the CDSA contemplates three distinct *mens rea*, *ie*, "consent", "connivance" as well as "neglect". While the difference in culpability between "neglect" and "consent or connivance" is obvious, there is also a fine difference in culpability between "consent" and "connivance" under English law – consent requires more explicit an agreement for the illegal conduct to take place. In *Huckerby v Elliot* [1970] 1 All ER 189, although the Divisional Court was essentially concerned with whether the appellant had committed an offence by reason of her neglect, Ashworth J noted that a fellow director of the company had pleaded guilty to a charge under the "consent" limb. In this connection, he expressed his approval for the following remarks which had featured in the magistrate's judgment from whose decision the appeal arose (at 194):

> It would seem that where a director consents to the commission of an offence by his company, he is well aware of what is going on and agrees to it … Where he connives at the offence committed by the company he is equally well aware of what is

> going on but his agreement is tacit, not actively encouraging what happens but letting it continue and saying nothing about it.

100 In *Attorney General's Reference No 1 of 1995* [1996] 1 WLR 970, the English Court of Appeal was asked to answer the question as to what was required to be proved against a director to show "consent". Lord Taylor of Gosforth CJ concluded that a director must be shown to have known the material facts that constituted the offence by the body corporate and to have agreed to its conduct of the business on the basis of those facts (at 981). Subsequently, Lord Hope in *Chargot* endorsed this test, adding that consent can be established by either inference or proof of an express agreement (at [34]).

101 It is clear from the above that the English cases distinguish between "consent" and "connivance". However, since this matter does not arise for conclusive determination before me, I shall leave the position in Singapore open until a further court gets the opportunity to examine the precise difference between these two *mens rea* requirements.

102 To add further complication, there is also the possibility of a fourth *mens rea*, that of recklessness, being encompassed within the rubric of "neglect". Conceptually speaking, recklessness may be regarded as a more culpable form of neglect. If the essence of neglect lies in the failure to do something which the officer ought to have done, it stands to reason that an officer who fails to do so despite being aware of the risk is more culpable than one who failed to appreciate what these risks were in the first place. The concept of recklessness must thus be encompassed as part of "neglect" in order for the offence to cover all intermediate forms of *mens rea* on the spectrum leading up to "connivance" and "consent".

103 Accordingly, these four distinct *mens rea* elements are subject to the same punishment provision in s 47(6) of the CDSA, *ie*, the maximum fine and maximum term of imprisonment are the same, even though the relevant culpability can vary greatly. This might make it difficult to determine the appropriate sentences in individual cases as the one-stop maximum sentence in s 47(6) is not a helpful end point to use as a scale for the less culpable *mens rea* of recklessness or negligence *simpliciter*. Thus, with the aim of offering some guidance for future sentencing decisions, I shall determine the so-called invisible or notional upper limits as an aid in determining the appropriate sentence when faced with the different degrees of culpability for offenders who possess the different *mens rea* elements of consent, connivance, recklessness or negligence *simpliciter*, at the time the offences were committed.

104 I am of the view that under s 59(1) for the CDSA, for "consent or connivance", the maximum term is **ten years' imprisonment**; for "recklessness" which is generally lower in culpability than "consent or connivance", the notional maximum may be treated as approximately **four years' imprisonment**; for "negligence *simpliciter*" which is generally even lower in culpability than "recklessness", the notional maximum may be treated as approximately **two years' imprisonment**.

105 The maximum for "consent or connivance", being the most culpable of the different possible *mens rea* for this offence, is naturally pegged to the maximum term of imprisonment provided under s 47(6) of the CDSA, *ie*, ten years' imprisonment. As for the two other broad possibilities of *mens rea* of recklessness and negligence *simpliciter*, I have determined these notional maximums based on a comparison of other criminal legislation in Singapore (reproduced for convenience in the Annex of this judgment). I have selected these provisions because Parliament has expressly indicated in these offences

the respective maximum imprisonment terms that can be awarded for differing *mens rea*, *ie,* intentional/knowledge-based *mens rea* vis-à-vis recklessness vis-à-vis negligence. Thus, these statutes serve as a guide for me to stratify and calibrate the notional maximums since the CDSA itself does not stipulate the stratification.

106 My analysis of these provisions leads me to conclude that there is often a *50%–60% reduction* in the maximum sentence when the offences concern recklessness as opposed to those committed with intention/knowledge and a further *50–60% reduction* when the offences concern negligence as opposed to recklessness. I should caveat that the analysis does not reveal absolute consistency but rather just a broad consistency.

107 I shall briefly highlight some of these provisions. First, reference may be made to the homicide offences in the Penal Code. Under s 304(*b*) of the Penal Code, the maximum term of imprisonment is ten years where the act of causing death is committed with the knowledge that it is likely to cause death. Under s 304A of the Penal Code, the same act of causing death but through a rash or negligent act carries a maximum of five years' imprisonment (50% discount from s 304(*b*)) and two years' imprisonment (60% discount from rash act under s 304A(*a*)) respectively. A similar reduction of 50% is evident in s 66 of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("the RTA") where causing death by reckless or dangerous driving carries a maximum of five years' imprisonment.

108 Second, such an analysis is also evident in the case of hurt and grievous hurt offences. For simple hurt, the maximum custodial sentence for voluntarily causing hurt is two years' imprisonment (s 323 of the Penal Code). However, where hurt is caused through a rash act, there is a 50% reduction to a maximum of one year's imprisonment (s 337(*a*) of the Penal Code) and where it is through

a negligent act, there is a further 50% reduction to a maximum of six months' imprisonment (s 337(*b*) of the Penal Code). A similar trend is discernible in the case of grievous hurt under ss 325 and 338 of the Penal Code – the discount from voluntarily causing grievous hurt (s 325) to rashly causing grievous hurt (s 338(*a*)) is 60%, *ie*, from a maximum imprisonment term of ten years to four years, whereas the discount from rashly causing grievous hurt to negligently causing grievous hurt (s 338(*b*)) is 50%, *ie*, from a maximum of four years to two years' imprisonment.

109 Third, there is also a discount of 50% on the maximum imprisonment term of six months for driving without due care or reasonable consideration (broadly speaking, negligent driving) under s 65 of the RTA when compared to the maximum imprisonment term of 12 months for reckless or dangerous driving under s 64(1) of the RTA.

110 Fourth, moving away from the offences of violence against persons, reference to the provisions in the Immigration Act (Cap 133, 2008 Rev Ed) ("the Immigration Act") shows that such a trend is also discernible in regulatory offences. Under s 57 of the Immigration Act, the maximum term of imprisonment for knowingly or recklessly harbouring a person who has acted in contravention of the Immigration Act or its regulations is two years under s 57(1)(iv). As in the case of the offences above, there is a 50% reduction to a maximum term of imprisonment of one year where this offence is committed negligently instead (s 57(1)(v) of the Immigration Act).

111 Fifth, as alluded to above, there are some anomalies. For instance, under the Electricity Act (Cap 89A, 2002 Rev Ed), the discount from a wilful act to a rash or negligent act in relation to electrical or supply installations under ss 83(2)–83(3) is from five years to three years, *ie*, 40% discount from wilful to

rash, slightly lower than the 50–60% range found in the offences above, and no distinction made between rash and negligent acts. A more extreme anomaly is s 37A of the Civil Defence Act (Cap 42, 2001 Rev Ed), where the discount from a wilful act to a negligent act causing irrecoverable loss of service property is 33.3%. This is much lower than the usual discounts from intentional/knowledge-related *mens rea* to negligence. These differences can presumably be explained on the basis that both electricity and civil defence concern public goods, such that Parliament may not have been willing to give the usual discount rate with the aim of exceptionally deterring these offences. Thus, these anomalies do not justify departure from the general norm that I have found above.

Sentencing considerations for "neglect" limb

(1) Respective starting points

112 Having established the respective notional maximums for the different *mens rea* under s 59(1) of the CDSA, I shall turn now to consider the specific issue at hand: where the commission of an offence by a body corporate under the CDSA can be attributed to the neglect of an officer of the body corporate, what are the relevant sentencing considerations when sentencing the officer?

113 In summary, I am of the view that an offender charged under the "neglect" limb and found to be merely negligent should receive a fine as a starting point (in the absence of aggravating factors) whereas the starting points for the "consent" and "connivance" limbs should be a custodial sentence. Having said that, even where the offender is charged under the "neglect" limb, if the circumstances are such that he is found to have been reckless instead of being merely *negligent*, this would be an aggravating factor that justifies the starting point of a custodial sentence.

114 In support of a non-custodial sentence as the starting point for purely negligent conduct, I find helpful the submissions made by Mr Foo on the issue of when a custodial sentence should be imposed for a breach of the duty to exercise reasonable diligence under s 157(1) of the CA.[75] Two of the reasons that he cites are equally relevant to justify why the custodial threshold should not ordinarily be crossed in relation to s 59(1)(*b*) of the CDSA when the "neglect" is merely that of negligence *simpliciter*. First, there is an intuitive sense that an offender is less morally culpable when the offence is committed merely negligently as opposed to recklessly, knowingly or intentionally.[76] Second, there is a sound theoretical basis to justify the custodial threshold being drawn between intention, knowledge and recklessness on the one hand and negligence on the other.[77]

115 Regarding the first reason, since negligence *simpliciter* is the least culpable *mens rea* in question, I am of the view that a custodial sentence should not ordinarily be imposed for purely negligent breaches of an officer's or director's duties. As astutely observed by Professor Brent Fisse in relation to the Austrian criminal justice system (cited with approval in Australia, Senate Standing Committee on Legal and Constitutional Affairs, *Company Directors' Duties* (Parliamentary Paper, No 395 of 1989, November 1989) at para 13.11):

> … Generally speaking, the approach adopted in our system of criminal justice is to require proof of guilty intention, knowledge or recklessness, especially where the offence carries the possibility of a jail sentence.

---

75 *Amicus curiae*'s Skeletal Submissions at paras 48–78.

76 *Amicus curiae*'s Skeletal Submissions at paras 55–68.

77 *Amicus curiae*'s Skeletal Submissions at paras 73–75.

116 Espousing the same view, the UK Law Commission said in *Criminal Liability in Regulatory Contexts* (Consultation Paper No 195, 2010) at para 3.10:

> One way in which our overall approach to regulatory legislation can be exemplified is by the use of a hierarchy of offences, to capture an adequate range of wrongdoing. For example, purely civil penalties, that can be committed without a substantially stigmatising fault element, can be underpinned by *a more serious offence involving dishonesty, intention, knowledge or recklessness*. … Cases involving the most serious forms of such wrongdoing may be met, if this is really necessary for adequate retribution and deterrence, *with a sentence of imprisonment*.
>
> [emphasis added]

117 In a similar vein, Professor Walter Woon has commented that a negligent breach of a director's duties should not generally be visited with a custodial sentence (Singapore Institute of Directors, "Dealing with Directors Who Fail In Their Duties & Responsibilities", *The Directors' Bulletin* (Issue 5, 2011) at p 9):

> As indicated above, criminalising negligence is more controversial than making dishonest behaviour criminal. *In general, a person should not go to jail for being negligent in the context of a company*; it is not like killing someone by negligent driving. However, going to jail is not the only criminal penalty. A *fine is equally a criminal penalty.*
>
> …
>
> Clearly, where a director has abdicated his responsibilities, the case for criminal penalties is stronger. This might not mean imprisonment, but *a fine would be appropriate* where a director deliberately shuts his eyes to malfeasance in the company.
>
> [emphasis added]

118 Turning to Mr Foo's second reason, *ie*, the theoretical foundations for drawing a distinction between negligence and more culpable forms of *mens rea*, the distinction between negligence and recklessness is sound and can be gleaned from the local pronouncements explaining the conceptual difference between

rashness and negligence. MPH Rubin JC (as he then was) first explained in *Public Prosecutor v Teo Poh Leng* [1991] 2 SLR(R) 541 at [7] (subsequently approved by Yong CJ in *Public Prosecutor v Poh Teck Huat* [2003] 2 SLR 299 at [17]):

> There is a distinction between a rash act and a negligent act. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted. Negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. A culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precaution to prevent their happening. The imputability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness, that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and if he had he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection. As between rashness and negligence, rashness is a graver offence.

119 Recently, Chief Justice Sundaresh Menon in *Public Prosecutor v Hue An Li* [2014] 4 SLR 661 ("*Hue An Li*") also recognised the conceptual difference between rashness and negligence (at [45]):

> In our judgment, *awareness of the potential risks* that might arise from one's conduct ought, in general, to be the dividing line between negligence and rashness. For both negligence and rashness, the offender would have fallen below the requisite objective standard of the reasonable person. The harsher sentencing regime for rashness is justified on the basis that the offender was *actually advertent to the potential risks which might arise from his conduct, but proceeded anyway despite such advertence*. This is essentially a restatement of the definitions of "rashness" and "negligence" enunciated in *Poh Teck Huat*, which, in our judgment, remain good law. In short,

> advertence to risk will *generally* be an *essential* element of rashness. …
>
> [emphasis added]

120 These pronouncements make it clear that the distinction between rashness and negligence lies in the offender's knowledge of the risks involved. Although the above pronouncements were made in the context of rashness, it applies equally for the purposes of the present inquiry to the *men rea* of recklessness as the state of knowledge for both rashness and recklessness is not materially different: see *Hue An Li* at [46]. When an individual acts rashly or recklessly, he is acting despite being aware of the risks involved, so a custodial sentence is more justifiable as compared to an individual who has no knowledge of such risks when acting negligently. In the context of s 59(1) of the CDSA, an officer of a body corporate would be found to have acted recklessly where he took no active steps despite actually being conscious of the strong likelihood that the body corporate was engaging in activities in contravention of the CDSA. Where he only *ought* to have been conscious of the likelihood that illegal activities were being perpetrated by the body corporate and did not exercise the caution expected of a person in his position, he would only be responsible for negligence *simpliciter*. A custodial sentence is more appropriate in the case of the earlier rather than the latter scenario.

121 I do acknowledge that the starting point, as established in *Hue An Li* at [133], for a negligent act causing death under s 304A(*b*) of the Penal Code is a short custodial sentence. However, it does not follow that the same outcome should be reached in the case of s 59(1)(*b*) of the CDSA because the latter does not involve the irreversible loss of a human life.

(2) Possible aggravating factors

122 Other than reckless conduct, in my view, the following factors could also aggravate an offence under s 59(1)(*b*) of the CDSA:

(a) commission of the offence for financial gain (see *Mehra Radhika v Public Prosecutor* [2015] 1 SLR 96 ("*Mehra Radhika*") at [51]; see also *Lee Chee Keet v Public Prosecutor* [2016] 4 SLR 1316 at [47] and *Ding Si Yang v Public Prosecutor and another appeal* [2015] 2 SLR 229 at [65]);

(b) the neglect in question being a series of lapses and not simply one-off (see, *eg*, *Ong Chow Hong (alias Ong Chaw Ping) v Public Prosecutor and another appeal* [2011] 3 SLR 1093 ("*Ong Chow Hong*") at [35]);

(c) serious consequences arising from the negligence such as heavy losses suffered by victims (see, *eg*, *Hue An Li* at [76] and *Lim Weng Kee* at [42]); and

(d) the nature of the officer's role and responsibilities in relation to the management and supervision of the company's activities and, in particular, the banking transactions and the corporate bank accounts.

Appellant's individual sentences for the CDSA offences

123 Having set out the relevant sentencing considerations for the "neglect" limb under s 59(1) of the CDSA, I shall now proceed to apply these considerations to determine the Appellant's individual sentences for the CDSA offences in the present case.

(1) Negligence *simpliciter* or recklessness?

124 In relation to each of the CDSA offences, the issue is whether the Appellant was merely negligent or was reckless. The District Judge instead used the tests of "wilful blindness" and "reason to believe" to adjudicate on the Appellant's *mens rea*. As I have explained above at [72], that was not the proper inquiry for the offences committed by the Appellant. However, for the purposes of the present discussion, in dealing with the findings of fact made by the District Judge, I shall notionally treat the *mens rea* of "reason to believe" as equivalent to that of recklessness.

125 As alluded to above at [73], I disagree with the District Judge that the Appellant was "wilfully blind" or "had reason to believe" that WEL was dealing with stolen properties in respect of *all the six CDSA charges*. In particular, I find that the Appellant was simply negligent in relation to the first three CDSA charges. His culpability increased to that of recklessness (or having "reason to believe") only after the receipt of the fourth recall notice. I shall explain my reasons for this finding.

126 As explained by the High Court in *Ang Jeanette v Public Prosecutor* [2011] 4 SLR 1 in relation to the offence under s 44(1)(*a*) of the CDSA (at [70]):

> … In *Ow Yew Beng v PP* [2003] 1 SLR(R) 536, the High Court held (at [10]) that having "reason to believe" involved a "lesser degree of conviction than certainty but a higher one than speculation". In applying the test, the court must assume the position of the actual individual involved (*ie*, including his knowledge and experience), but must reason (*ie*, infer from the facts known to such individual) from that position like an objective reasonable man (see *Koh Hak Boon v PP* [1993] 2 SLR(R) 733 at [13] and *PP v Wang Ziyi Able* [2008] 2 SLR(R) 61 at [87]).

127 Mere carelessness, failure to inquire and "reason to suspect" would not be considered a "reason to believe" (*Koh Hak Boon and others v Public Prosecutor* [1993] 2 SLR(R) 733 at [10], citing *Gulbad Shah v The Empress* (1888) PR No 37 of 1888 at 94–95). More crucially, it has been said that the presence of suspicious circumstances is insufficient to cross the threshold of "reason to believe" (*Tan Ser Juay v Public Prosecutor* [1971–1973] SLR(R) 246 at [3]):

> On the present evidence there quite clearly were suspicious circumstances. It must have raised suspicions in him to be asked to try and arrange to sell a few hundred watches particularly without the availability of the relevant certificates in respect of the more expensive ones and without being given a receipt from the seller for his purchase, but the law does not allow for a conviction based merely on suspicion and therefore this appeal is allowed and the conviction and sentence set aside.

128 Applying these considerations, I am of the view that all the Appellant could have had before the fourth recall notice was a "reason to suspect". He did not have any sufficient cause to believe that WEL, which had no active transactions at that point, and which was a different company from Kassar with a different executive director (albeit introduced also by Nadia), was similarly involved in money laundering activities.[78]

129 For the same reasons, the Appellant was unlikely to have been aware of the strong likelihood that WEL was involved in money laundering activities, *ie*, he was not reckless for the first three CDSA charges. All he had was a reasonable suspicion that WEL (just like Kassar) might be involved in such illicit activities (see above at [67]–[69]) but he is unlikely to have believed that a strong likelihood existed. However, that does not mean that the Appellant was

---

[78] ROP, vol 1, p 564.

not negligent because his duty as local resident director obliged him to take steps to inquire into the dubious state of affairs (see above at [70]–[71]). Since the Appellant's *mens rea* was only that of negligence for the first three CDSA charges, applying the guidelines I have stated above, the starting point for the Appellant would be a fine.

130 However, I am of the view that the Appellant's culpability evolved from mere negligence to sheer recklessness by the time he received the fourth recall notice from UOB, which specifically alerted him to a probable fraudulent transaction, as it was stated that the remitter alleged it to be a "fraudulent transaction". In this context, it is important to first appreciate the chronology of events that unfolded between the April 2012 to May 2012 in relation to WEL's account:[79]

Date	Event
11 Apr 2012	First deposit of US$15,570.70
12 Apr 2012	**First recall notice**: "to cancel above payment [USS14,452] and return fund"
13 Apr 2012	First withdrawal of US$27,500.00 ("1st charge")
16 Apr 2012	Second deposit of US$10,000
18 Apr 2012	Second withdrawal of US$20,600.00 ("2nd charge")
19 Apr 2012	**Second recall notice**: "to cancel above payment

[79] Appellant's Skeletal Submissions at para 119.

	[US$23,617.03] and return fund, as payment was sent in error"
26 Apr 2012	Third deposit of US$43,016.90
27 Apr 2012	Third withdrawal of US$150,000.00 ("3rd charge") **Third recall notice**: "to cancel above payment [US$21,505.43] and return fund"
30 Apr 2012	**Fourth recall notice**: "to cancel subject payment [US$149,991.99] and return funds, as remitter states it was a **fraudulent transaction**" [emphasis added]
3 May 2012	Fourth deposit of US$135,991.88
4 May 2012	Fourth withdrawal of US$250,000.00 ("4th charge")
8 May 2012	Fifth deposit of US$28,377.50
9 May 2012	Fifth withdrawal of US$100,000.00 ("5th charge")
15 May 2012	**Fifth recall notice**: "to cancel subject payment [US$134,492.42] and return funds"
17 May 2012	**Sixth recall notice**: "to cancel above payment [US$135,991.88] and return fund"
24 May 2012	**Seventh recall notice**: "to cancel subject payment [US$43,016.90] and return funds"
25 May 2012	Sixth deposit of US$88,997.53

28 May 2012	Sixth withdrawal of US$89,200.00 ("6th charge")

131 As is evident from the above, the Appellant received seven recall notices from UOB concerning funds paid into WEL's account by various business entities. Since these were sent via local mail to the Appellant's office,[80] the Appellant would have been aware of their contents soon after the date of the notices as indicated.

132 One will also notice that the amounts stipulated in some of the recall notices do not match any of the deposits indicated above because these recall notices were sent in respect of *other* deposits made to WEL's account, not the deposits correlated to the CDSA charges. Nevertheless, the recall notices are still significant (even if they were in respect of other deposits) because they would have alerted the Appellant to the strong likelihood that WEL was engaging in illicit money laundering activities.

---

[80] ROP, vol 2, pp 605–613 (P45).

133 Based on these notices, the District Judge commented:

> 65. [The Appellant] had testified that he never had any problems with cheques which were wrongly issued, funds recall letter or any issues concerning fraudulent transfers, in all the other companies which he was local director of. Yet, other than acting as a post box ie emailing the scanned copies of the above funds recall letters to Nadia, he did nothing else. Any reasonable person in his position would have been increasingly suspicious with each fund recall notice received. He should have been placed on notice by these red flags. *Especially significant was the notice dated 30 Apr 12 where it explicitly made reference to fraud having been committed.* But [the Appellant] was not suspicious nor did he make inquiries. He sought to explain his inaction by saying that from experience, it was not unusual to receive funds recall notices although they were few and far in between. Firstly, this contradicted his earlier assertion that he had no such problems with all the other companies which he was a local director of. Secondly, seven funds recall notices in a space of two months was not "few and far in between". Thirdly, the amounts involved in these seven notices were substantial.
>
> [emphasis added]

134 I agree with the District Judge that the fourth recall notice is a critical one. In my view, the receipt of the fourth recall notice, with its express reference to a fraudulent transaction, must have greatly strengthened the Appellant's already existing suspicions regarding the companies introduced by Nadia (see above at [67]–[69]). This must have alerted the Appellant to the much higher likelihood of WEL engaging in illegal or fraudulent activities. Despite being aware of these grave risks, the Appellant did not take any appropriate action such as contacting the bank or alerting the authorities to freeze the account. Neither did he act when there was *absolute silence* from Nadia (which would have been worrying to any director in the shoes of the Appellant who receives a notice from a bank of a fraudulent transaction in his company's bank account) after he scanned and emailed the recall notices as and when he received them.[81]

---

[81] ROP, vol 1, p 578.

Thus, despite being conscious of the risks of WEL's account being used for fraudulent transactions by the time he was aware of the contents of the fourth recall notice, the Appellant still did not do anything differently. In the circumstances, I find such conduct to be reckless.

135 This finding of recklessness on the part of the Appellant sometime after the receipt of the fourth recall notice dated 30 April 2012 would have an impact on the sentences for the 4th to 6th charges, since the corresponding fourth to sixth deposits and withdrawals came after the fourth recall notice (see table at [130]). Thus, the starting point of a custodial sentence is applicable to each of these charges. In determining the term of imprisonment, the relevant factors I consider are the quantum of the stolen properties and the Appellant's level of awareness of the strong likelihood that WEL was engaging in money laundering. Naturally, the Appellant's recklessness became more and more culpable as the days went by and with the receipt of further recall notices, *ie*, the fifth, sixth and seventh recall notices. With respect to the quantum, although the amounts reflected in the CDSA charges were the amounts which had been transferred out, I agree with the District Judge that the relevant quantum to consider would be the corresponding inward illicit deposits.[82] This is to ensure that the Appellant would only be punished for the transfer of stolen properties deposited in WEL's account instead of the amounts withdrawn (which also included other funds).

---

82 GD at [103].

136 Accordingly, I sentence the Appellant to:

(a) eight months' imprisonment on the 4th charge (having regard to the significant amount of stolen money, *viz*, US$135,991.88, deposited and transferred out the following day, which was four days after the date of the fourth recall notice);

(b) two months' imprisonment on the 5th charge (having regard to a comparatively smaller amount of stolen money, *viz*, US$28,377.50, deposited and transferred out the following day, which was nine days after the date of the fourth recall notice); and

(c) ten months' imprisonment on the 6th charge (having regard to the moderately significant amount of stolen money, *viz*, US$88,997.53, deposited and transferred out three days later, which came after three further recall notices and 28 days after the date of the fourth recall notice).

137 I have used the notional maximum of four years' imprisonment for "recklessness" to assist me in calibrating the appropriate quantum of imprisonment for the 4th to 6th charges to the different extent of culpability in relation to each of these charges. I will order the sentences for the 5th and 6th charges to run consecutively and the sentence for the 4th charge to run concurrently with the 6th charge.

138 As for the 1st to 3rd charges, which arose out of negligence *simpliciter*, there are no weighty aggravating factors in the present case to justify a custodial sentence. The Appellant will accordingly be punished with an appropriate fine, even though I have notionally set the maximum imprisonment term for negligent acts to be two years. In ascertaining the quantum of the fine, I similarly

take into consideration the amounts of stolen properties in question and the degree of negligence involved. I accordingly substitute the custodial sentences imposed on the Appellant in respect of these charges to a fine of S$10,000 on the 1st charge, S$10,000 on the 2nd charge and S$30,000 on the 3rd charge respectively. The 1st and 2nd charges concern relatively smaller amounts of stolen money and were committed by the Appellant after the first recall notice. However, the 3rd charge involves a larger amount of stolen money and is for an offence committed after the second recall notice which should have further heightened his awareness to the likelihood of illegality of the banking transactions carried out in WEL's account. I also note that the third withdrawal took place eight days after the second recall notice such that any active intervention from the Appellant could possibly have thwarted this transaction. For the higher degree of negligence and the larger amount of stolen property involved in the 3rd charge when compared to the 1st and 2nd charges, I impose a higher fine on the Appellant.

139 Overall, the Appellant's sentences for the offences under the CDSA are as follows:

CDSA charges	**Sentence**
1st charge	S$10,000 (in default ("i/d") two weeks' imprisonment)
2nd charge	S$10,000 (i/d two weeks' imprisonment)
3rd charge	S$30,000 (i/d six weeks' imprisonment)
4th charge	Eight months' imprisonment (to run

	concurrently with the sentence for the 6th charge)
5th charge	Two months' imprisonment (to run consecutively with the sentence for the 6th charge)
6th charge	Ten months' imprisonment

(2) Misplaced analogy to "individual money mule" cases

140 It leaves me now to briefly comment on the analogy drawn by the District Judge with "individual money mule" cases. The Appellant submits that the District Judge had erroneously likened the Appellant's culpability to that of an individual money mule in determining the quantum of imprisonment for each of the CDSA offences.[83] The District Judge's conclusion on this matter was premised on the finding that the Appellant knew or had reason to believe that WEL was dealing with stolen properties.[84]

141 I agree with the Appellant that this analogy is misplaced for the primary reason that the Appellant did not play an active part in the money laundering activities and was only implicated due to his negligence/recklessness.[85] Individual money mule cases typically involve individuals whose personal bank accounts are used to receive and transfer funds. The transfers are also generally done by the individual themselves with knowledge or reason to believe that they are dealing with laundered funds – thus they are the primary offenders under s

---

83 Appellant's Skeletal Submissions at paras 168–176.

84 GD at [101].

85 Appellant's Skeletal Submissions at para 171.

47(1)(*b*) of the CDSA. The Appellant, on the other hand, was only a secondary offender due to his negligence/recklessness under s 59(1)(*b*) of the CDSA and he did not perform any of the transfers himself. In fact, the Appellant had no authority to close the bank account on his own accord unlike an individual money mule; Sima was the sole authorised signatory of WEL's account.

142 Just because the maximum sentence is the same for both the primary and secondary offenders (see above at [98]) does not mean that the culpability of the two offenders in question is the same. It cannot have been the intention of the legislators for an individual money mule to have the same culpability as that of a director who was negligent/reckless in the context of his company's bank accounts. Instead, it might be possible for this analogy to be drawn where the offence is one under s 59(1)(*a*) of the CDSA instead, as it then involves the "consent or connivance" of the officer of the company. In stark contrast, the Appellant's culpability (which is rooted in negligent/reckless failure to act) cannot be likened to the culpability of an individual money mule as it is only predicated on his *failure to take action* and not the taking of any positive action or any other involvement in the offence.

(3) Comparison with the case of Andrew Norman Barrell

143 Before I leave the issue on sentence in relation to the CDSA offences, a comparison should be made with a similar case that was concluded in the State Courts (without endorsing the leniency or otherwise of the sentence imposed in that case). Although the Appellant was the first to be sentenced under s 59(1) of the CDSA, by the time this appeal was heard, Andrew Norman Barrell ("Mr Barrell") had pleaded guilty and was sentenced on 18 May 2016 to similar charges under the CDSA. Mr Barrell was sentenced to a global term of 24 months' imprisonment (*ie*, two months lower than the Appellant, as imposed by

the District Judge in relation to the CDSA offences). A relative comparison of the culpabilities and the respective sentences received by Mr Barrell and the Appellant (as imposed by the District Judge) lends support to my decision to allow the Appellant's appeal against sentence for the CDSA offences, although I note that Mr Barrell had pleaded guilty, which was a mitigating factor in his favour, while the Appellant had claimed trial.

144 Mr Barrell was a director of the company known as SGS Consulting Pte Ltd ("SGS"). SGS was set up by Mr Barrell and he was the sole shareholder and *signatory* of SGS's corporate bank account. Mr Barrell was introduced to one Graham Robert Etson ("Graham"), who sought the former's assistance to set up businesses in Asia. Graham claimed to be working for a Spanish company known as "First Global Indemnity SI" ("FGI"). After some discussion, Mr Barrell reached an agreement with Graham, whereby Mr Barrell would set up a company in Singapore, which would enter into a contract with FGI (represented by Graham). Under this contract (a consulting agreement), SGS would:

> (a) provide consulting services to FGI for the setting up of companies in Asia; and
>
> (b) receive funds from FGI and hold them on trust for FGI and (1) use the funds to cover any cost incurred by SGS in setting up companies for FGI; and (2) transfer the remainder as capital to these companies which were set up by FGI in Asia.

145 For these two services, SGS would be paid a monthly fee calculated at 6% of the money which was being held on trust for FGI. Mr Barrell admitted that the service of holding funds on trust for FGI constituted 80–90% of the work done by SGS for FGI. Subsequently, numerous fraudulent payments were remitted by individuals to SGS's corporate bank account, which was then

transferred by Mr Barrell to Graham, despite having reason to believe that the funds received were stolen properties. In total, SGS had transferred approximately S$582,000 of stolen monies (which was more than the amount of US$321,954.51 (S$403,867.33)[86] of fraudulent deposits that were transferred out together with other monies by WEL in the present case) and Mr Barrell had obtained for himself a commission of S$34,150.

146 Arising from these facts, Mr Barrell pleaded guilty to 20 charges: 15 counts of transferring the benefits of criminal conduct under s 47(1)(*b*) punishable under 47(6)(*a*) read with s 59(1)(*a*) of the CDSA and five counts of obtaining such benefits under s 47(3) punishable under s 47(6)(*a*) of the CDSA. He also admitted to 79 other charges under the CDSA, which were taken into consideration for the purposes of sentencing.

147 From a comparison of the facts in the present case to that involving Mr Barrell, it is immediately clear that Mr Barrell was certainly far more culpable than the Appellant in several ways. First and foremost, the charge faced by Mr Barrell was in relation to s 59(1)(*a*) of the CDSA in that the transfers from SGS's corporate bank accounts were done with the *consent* of Mr Barrell. In fact, Mr Barrell had performed these transactions *himself* unlike in the case of the Appellant where the transfers were all done by Sima as the sole signatory of WEL's account. Second, Mr Barrell had received substantial amounts of financial gain, *ie*, S$34,150, which was directly tied to the amounts of stolen properties SGS received (see above at [122(a)] for its relevance). Whilst the Appellant too has gained financially as a result of his acting as a local resident director for WEL, this benefit was not tied to his commission of the offences. In other words, he would have received the same fixed remuneration

[86] GD at [103].

irrespective of whether WEL was engaging in any illegal activities and *a fortiori* irrespective of the quantum of the stolen funds. Third, the aggregate amount of stolen monies being transferred by Mr Barrell was more than the aggregate amount of stolen monies being transferred out of WEL's account in the present case. Fourth, Mr Barrell was convicted of a far larger number of charges than the Appellant and 13 different victims were involved as compared to six victims in the present case.

148 Despite this marked difference in culpabilities, Mr Barrell received a lower custodial sentence than the Appellant. Whilst I acknowledge that Mr Barrell had pleaded guilty unlike the Appellant, that fact alone cannot possibly reduce Mr Barrell's sentence by such a significant proportion. This is especially on account of the different maximum custodial sentence of ten years for the "consent" limb (under which Mr Barrell was charged) as opposed to the notional maximum custodial sentence for the reckless *mens rea* under the "neglect" limb, which I have set at four years as a guide for the purpose of sentencing under this less culpable limb. This is a further reason why I find that the sentences imposed by the District Judge on the Appellant for the CDSA offences are manifestly excessive, warranting appellate intervention.

CA offence

149 Turning to consider the Appellant's appeal against sentence in relation to the CA offence, the District Judge determined that the custodial threshold had been crossed on the basis that the present case raised serious public policy considerations in affecting the wider financial system as a whole.[87] Accordingly,

---

87 GD at [105].

the District Judge sentenced the Appellant to four weeks' imprisonment, taking into account the large amounts of stolen properties received.[88]

150 As this is the first reported case where a director has been imprisoned on account of a breach of the duty to exercise reasonable diligence under s 157(1) of the CA, this appeal raises an issue of law as to when custodial sentences should be imposed for such breaches, a question thus appropriately referred to Mr Foo, as the *amicus curiae*. I found Mr Foo's oral and written submissions very helpful in deciding this question and have adopted most of the points that he has raised.

Legislative intention of s 157(1) CA

151 Mr Foo submits that the appropriate starting point is to consider the legislative context and *raison d'être* of the offences under s 157(1) of the CA.[89] I agree that this should be the starting point, especially for a provision like s 157(3) of the CA, which provides the possibility of both a fine and a custodial sentence. This was also the approach adopted in *Public Prosecutor v Chow Chian Yow Joseph Brian* [2016] 2 SLR 335:

> 20 I pause to note that when an Act provides for a fine or an imprisonment term to be imposed, it is important for a court to determine the circumstances in which a custodial sentence would be appropriate …
>
> 21 The court must approach the analysis of the custodial threshold in a principled manner by first examining the relevant statutory provision creating the offence and *appreciating the policy underlying the said provision*. The court should then examine whether that underlying policy intrinsically reveals or provides a clear indication of the custodial threshold for the offence.

---

88 GD at [106].

89 *Amicus curiae*'s Skeletal Submissions at paras 12–15.

> [emphasis added]

152 This approach was also referenced by Menon CJ in *Mehra Radhika* (at [28]):

> Legislative intention is also relevant in the assessment of the appropriateness of a sentence for an offence that has a statutorily prescribed range of sentences. …

153 From an analysis of several legislative sources, Mr Foo identifies the *raison d'être* of s 157(1) of the CA, which he refers to as the "twin rationales" of: (1) protecting the public by deterring directorial misconduct and (2) preserving a vibrant commercial environment.[90] This is evident from the local parliamentary debates when s 157 of the CA was first introduced as cl 132 of the Companies Bill 1966 (Bill 58 of 1966) – *Singapore Parliamentary Debates, Official Report* (21 December 1966), vol 25 at col 1076 (Edmund W Barker, Minister for Law and National Development):

> … The Bill proposes to give the investing public adequate protection, but, at the same time, tries not to place an undue or unnecessary burden upon honest business enterprises. It will do much to provide a healthy climate for investment and a sound basis for action against fraudulent and undesirable practices. …

154 At first blush, these twin rationales may seem irreconcilable as deterring directorial misconduct might presumably stymie commercial conduciveness. Such concerns have been raised by academics: see Timothy Liau, "Is Criminalising Directorial Negligence A Good Idea?" (2014) 14(1) JCLS 175 at p 181:

> Ultimately, it may be unwise to have the sword of Damocles of criminal sanction hanging over the head of honest directors trying their best to do their jobs. *Overzealous criminalisation in*

---

90 *Amicus curiae*'s Skeletal Submissions at paras 17–39.

> *the name of public interest might end up creating more problems than it resolves.*
>
> [emphasis added]

155 Having made this observation, I agree with Mr Foo[91] that the way these two competing rationales can be balanced is through the proportionality analysis, which is often utilised in sentencing to act "as a counterbalance to the principles of *deterrence*, retribution and prevention" (*Goik Soon Guan v Public Prosecutor* [2015] 2 SLR 655 at [22]) [emphasis added]. Although the proportionality principle is traditionally concerned with "the severity of the offence" as well as "the moral and legal culpability of the offender" (*Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [31], given the competing twin rationales underpinning the CA, I am of the view that the proportionality consideration should also take into consideration the public interest in not over-deterring the commercial market.

When is the custodial threshold crossed?

156 Having considered the legislative intention of s 157(1) of the CA, Mr Foo submits that a custodial sentence should only be imposed if the duty to exercise reasonable diligence is breached "intentionally, knowingly or recklessly". This means that unless there are weighty aggravating factors, negligence *simpliciter* should in most cases not result in the imposition of a custodial sentence.[92] He cites three reasons in support.[93] First, the culpability of an offender, who does not breach the duty to exercise reasonable diligence intentionally, knowingly or recklessly, does not *prima facie* warrant a custodial sentence. Second, the deterrence rationale resonates with less force when an

91 *Amicus curiae*'s Skeletal Submissions at para 39.

92 *Amicus curiae*'s Skeletal Submissions at para 50.

93 *Amicus curiae*'s Skeletal Submissions at para 51.

offence is not committed intentionally, knowingly or recklessly. Third, considering the full range of sanctions at the courts' disposal, a custodial sentence should *prima facie* be reserved only for higher levels of an offender's culpability. I broadly agree with Mr Foo on all three of these reasons and I shall briefly explain why.

157 On the first reason, I have already elaborated on this at [114]–[120] in the context of the CDSA offences.

158 The second reason speaks directly to one of the twin rationales under the CA, that of deterrence and its limited relevance in the case of a purely negligent breach of a directors' duties. In a related vein, I find helpful the observations made by V K Rajah J (as he then was) in *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653:

> 29 I am conscious that s 88A of the [Administration of Muslim Law Act (Cap 3, 1999 Rev Ed)] is enacted as a strict liability offence. One must bear in mind, in this regard, that it is axiomatic that even negligent and unintentional breaches of strict liability offences should be treated seriously. …
>
> …
>
> 32 That said, *there must clearly be a distinction between breaches of strict liability offences where the offender has acted deliberately and with intent on the one hand, and breaches which are merely a result of negligence and oversight on the other*. In reality, meting out a sentence near the maximum allowable under the statute for an offence that barely even approximates the "worst type of cases falling within the prohibition" (*Bensegger v R* [1979] WAR 65, referred to in *Sim Gek Yong* at [12]-[13]) is *more likely to diminish rather than enhance any general deterrent value*. If the difference in penalty between a serious and minor breach of an offence is only marginal, it reduces the incentive (or disincentive) to refrain from committing the more egregious offence. In any event, even where general deterrence is applied as a sentencing consideration, the principle of proportionality in relation to culpability, the magnitude of the offence committed and the particular statutory scheme of punishment that Parliament has

> designed should not be papered over in assessing the appropriate sentence for that particular case **...**
>
> [emphasis added]

159 In a different context, Rajah J (as he then was) also commented as follows in *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 (at [22]):

> Specific deterrence is usually appropriate in instances where the crime is premeditated: *Tan Fook Sum* ... at [18]. This is because deterrence probably works best where there is a *conscious* choice to commit crimes. Nigel Walker and Nicola Padfield in *Sentencing: Theory, Law and Practice* (Butterworths, 2nd Ed, 1996) ... at p 99 explain the theory of 'undeterribility'. Pathologically weak self-control, addictions, mental illnesses and compulsions are some of the elements that, if possessed by an offender, may constitute 'undeterribility', thus rendering deterrence futile. Such elements seem to involve some form of impulse or inability to make proper choices on the part of the offender, which, by definition, runs counter to the concept of premeditation. It should be pointed out here that this reasoning applies with equal cogency to *general* deterrence ...
>
> [emphasis in original]

160 These observations should not be interpreted, however, as saying that deterrence has no relevance in the case of negligence – imposing deterrent sentences will undeniably ensure that directors are more careful in the discharge of their duties. Thus, Rajah JA has commented in *Public Prosecutor v Wang Ziyi Able* [2008] 2 SLR(R) 1082 in the context of the offence of making false statements under the Securities and Futures Act (Cap 289, 2006 Rev Ed) (at [29]):

> ... Where, for example, the false statement had been made negligently, *deterrence could arguably be a significantly less relevant consideration since the offence would have been committed without any reckless or dishonest intent*. That said, *in egregious cases, a custodial sentence (in addition to a fine) may be appropriate even when false statements are made negligently*. It is in the public interest that all types of irresponsible conduct be deterred through appropriate sanctions. The decision to impose fines in *PP v Wong Tai* ... may be arguably justified on the basis that there was no "intent" or

> "recklessness", though I must confess to entertaining serious reservations about the appropriateness of purely pecuniary punishment in that case. Where materially false information is disseminated with dishonest intent to induce other persons to purchase or sell shares, a custodial sentence should (in combination with fines) almost inevitably be imposed. This would better address and redress the differing degrees of culpability in a range of offences, serving to deter the appropriate class of potential offenders without being excessively harsh to the particular offender being convicted and sentenced.
>
> [emphasis added]

161 Thus, in appropriate cases, deterrence can still be relevant in the case of purely negligent actions where for instance, there are sufficient aggravating factors. Generally speaking, however, in view of the second rationale of not hampering commerce through over-criminalisation, deterrence ought to be given *lesser* importance in the case of purely negligent breaches of directors' duties as compared to intentional, knowing or reckless breaches.

162 The final reason is that custodial sentences should primarily be reserved for intentional, knowing or reckless breaches because the courts have at their disposal other appropriate sanctions to deter purely negligent breaches of the duty to exercise reasonable diligence. In ascertaining the custodial threshold, this is a relevant consideration as it is possible that other available sanctions might be better suited or would be sufficient to achieve the goal of realising the intended principles of sentencing, whether it be deterrence, rehabilitation, prevention or retribution.

163 This analysis is particularly significant in the case of a breach of directors' duties under s 157(1) of the CA because a director potentially stands to face the following possible sanctions:

(a) termination of directorship by the company;

(b) civil liability and damages;

(c) criminal conviction;

(d) fine;

(e) disqualification order; and

(f) imprisonment.

164 I do not need to belabour the point any further by going through the deterrent effect of each of these types of punishment except to make just two observations. First, I agree with the Appellant that the threat of a lengthy disqualification order under s 154(2)(*b*) of the CA is likely to deter directors from failing in their duties of reasonable diligence (see *Ong Chow Hong* at [24]).[94] For some directors like the Appellant who earn a living through the provision of local resident directorship services, the sanction of a lengthy disqualification order with the consequent effect of losing one's livelihood can be equally deterrent or perhaps even more deterrent than the prospect of a short custodial sentence.

165 Second, Mr Foo points out that it is possible that courts might decide to impose a custodial sentence given that s 157 of the CA provides only for a maximum fine of S$5,000, which may be regarded as a "slap on the wrist" in some cases of negligence.[95] However, in a situation where an offender's culpability *does not justify* a custodial sentence but warrants a fine higher than S$5,000 (if that were legislatively possible), it does not follow that the courts should automatically proceed, in the aim of achieving deterrence, to impose a

94 Appellant's Skeletal Submissions at paras 165–167.

95 *Amicus curiae*'s Skeletal Submissions at para 108.

custodial sentence. Indeed, where there is a gulf between the maximum statutory fine and the custodial sentence, the answer is not necessarily to impose a custodial sentence (in breach of the principle of proportionality) but for Parliament to revise the maximum fines (see, *eg*, *Ngian Chin Boon v Public Prosecutor* [1998] 3 SLR(R) 655 at [16] and *Wong Tiew Yong and another v Public Prosecutor* [2003] 3 SLR(R) 325 at [66]–[68]).

166 For these reasons, I am of the view that the starting point for purely negligent breaches of the duty to exercise reasonable diligence is a fine (where there are no weighty aggravating factors) with custodial sentences being imposed where the director breaches this duty intentionally, knowingly or recklessly.

Respective maximums under s 157(1) CA

167 Just as I have suggested the respective maximum terms of imprisonment in relation to the CDSA offences, I briefly propose to suggest the same for the different *mens rea* contemplated under s 157(1) of the CA. To recapitulate, s 157(1) reads:

> **As to the duty and liability of officers**
>
> **157.**—(1) A director shall at all times act honestly and use *reasonable diligence* in the discharge of the duties of his office.

168 Criminal liability for a breach of s 157(1) of the CA is provided for in s 157(3)(*b*) of the CA:

> (3) An officer or agent who commits a breach of any of the provisions of this section shall be —
>
> …
>
> (*b*) guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

169 Adopting the same methodology I have used at [106] above, the maximum term of imprisonment for dishonesty as well as intentional/knowing disregard of the director's duty to exercise reasonable diligence in the discharge of the duties of his office is the statutory maximum of **12 months' imprisonment**; reckless failure to exercise reasonable diligence attracts a notional maximum of approximately **six months' imprisonment;** and negligent failure of this duty has a notional maximum of approximately **three months' imprisonment**.

Appellant's sentence for the CA offence

170 Applying these considerations, the key question is whether the Appellant breached his duties of reasonable diligence intentionally, knowingly, recklessly or merely negligently.

171 Similar to the reasons above in relation to the CDSA offences (at [130]–135]), I am of the view that the Appellant was merely negligent in respect of the first, second and third deposits of stolen monies. He was however, recklessly in breach of his duty to exercise reasonable diligence in respect of the fourth, fifth and sixth deposits of stolen monies. However, the CA offence is different from the CDSA offences in that the Appellant's failure to exercise reasonable diligence in relation to WEL's receipt of stolen properties is in respect of one *single* offence.

172 In the circumstances, the single offence had a composite *mens rea* of both negligence and recklessness. Thus, I have to analyse which is the more predominant *mens rea* and I do so by analysing the relative quantum of deposits during the periods where the Appellant was negligent *simpliciter* and reckless respectively. On the present facts, the total deposits amounted to

US$321,954.51, of which only US$68,587.60 (21.3%) were deposited when the *mens rea* of negligence *simpliciter* applied while 78.7% of the deposits took place when the *mens rea* of recklessness applied. Thus, the offence in question in relation to the Appellant's failure to exercise reasonable diligence which resulted in WEL's receipt of stolen properties is predominantly tainted with the *mens rea* of recklessness. Accordingly, sufficient grounds exist for me to hold that the custodial threshold is crossed. In the circumstances, I do not find the District Judge's imposition of a short custodial sentence of four weeks to be manifestly excessive.

Conclusion on the Appellant's global sentence

173 I order the custodial sentences for the 5th and 6th charges under CDSA to run consecutively. In view of the one-transaction rule,[96] I order the custodial sentences for the 4th charge and the CA charge to run concurrently with the 6th charge. This would lead to an aggregate term of 12 months' imprisonment.

174 In relation to the 1st, 2nd and 3rd charges under the CDSA, I substitute the custodial sentences imposed on the Appellant with a total fine of S$50,000 (i/d a total of ten weeks' imprisonment).

175 As there is no appeal by the Appellant on the disqualification order, I will not disturb it.

---

[96] Appellant's Skeletal Submissions at para 187 and *Amicus curiae*'s Skeletal Submissions at paras 181–189.

Appeal against the costs order

176 It leaves me to then consider the Appellant's appeal on the costs order granted by the District Judge under s 355(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC"), which reads:

> **Order for payment of costs of prosecution against accused and order for payment of costs incurred by accused in his defence**
>
> **355.—**(1) The court before which a person is convicted of an offence may, in its discretion and if satisfied that the defence of the person was conducted in an extravagant and unnecessary manner, order that person to pay a sum to be fixed by the court by way of costs of his prosecution.

177 The District Judge reasoned that the Appellant had insisted on cross-examining the victims of the offences committed by WEL and did not agree to the fact that the money they paid were stolen properties, notwithstanding that he did not dispute this in his Case for the Defence ("CFD").[97] Further, when five of the victims, including a foreign witness from Sudan, testified at the trial, they were not cross-examined as to whether they were deceived to pay the monies to WEL but the cross-examination instead touched on irrelevant or at best peripheral issues which did not advance the Appellant's defence.[98]

178 The Appellant submits that the District Judge failed to appreciate that cost orders in criminal proceedings should only be imposed in the most egregious of circumstances. In particular, he erred in finding that the Appellant had conducted his defence extravagantly and unnecessarily because the Appellant did not concede in his Case for the Defence that the monies were stolen properties.[99] Consequently, the Appellant submits that his inherent right

---

97 ROP, vol 5, pp 391–394.

98 GD at [100].

to claim trial had been unduly compromised with the costs order.[100] In response, the Prosecution adopts the reasoning of the District Judge in its submissions on this point.[101]

179 Accordingly, the primary issue on this aspect of the appeal is whether the Appellant's defence was conducted extravagantly and unnecessarily. Having considered the parties' submissions and the notes of evidence of the trial that transpired below, I find that the District Judge ought not to have made the costs order because the requisite threshold for the imposition of costs on the Appellant is not satisfied.

The law on costs orders to the Prosecution

180 As a starting point, costs to the Prosecution are awarded only in the most exceptional of circumstances so as to ensure that accused persons can conduct their defence without the fear of a costs sanction. The rationale for typically eschewing costs orders in criminal proceedings was explained by Tan Siong Thye JC (as he then was) in *Arun Kaliamurthy and others v Public Prosecutor and another matter* [2014] 3 SLR 1023:

> 17 … in criminal proceedings, costs orders are *usually not made*. Costs orders against the defence ("the Defence") or the Prosecution are made only in very limited circumstances and are not premised upon who is the successful litigant. …
>
> 18 The reason behind limiting ground for the award of costs in criminal proceedings is the public interest element in criminal litigation. … [T]he Defence acting honestly and reasonably must be encouraged to advance the cause of justice *without fear of financial prejudice*. Both the Prosecution and the Defence are discharging public functions in the interests of

---

99 Appellant's Skeletal Submissions at paras 226–228.

100 Appellant's Skeletal Submissions at para 211.

101 Prosecution's Skeletal Submissions at paras 135–136.

> justice by securing convictions and acquittals of criminals and innocents respectively. Neither should be deterred from performing such public functions out of fear of a likely adverse costs order. As a result, adverse costs orders are only provided for in limited circumstances.
>
> [emphasis added]

181 In line with this high threshold, it is trite that the law does not compel an accused to plead guilty where the case for claiming trial would be a weak one. Every accused person has a right to claim trial and put the Prosecution to strict proof of his guilt even where the Prosecution has a strong case (*Jasbir Kaur v Mukhtiar Singh* [1999] 1 SLR(R) 616 ("*Jasbir Kaur*") at [39]). In a case where the Prosecution has an exceptionally strong case, the consequence may be that the accused may not be given the ordinary discount in sentence associated with pleading guilty but it should not, without more, be considered to be "an extravagant and unnecessary" conduct of the defence to expect the Prosecution to prove its case, warranting the imposition of a costs order (see *Jasbir Kaur* at [39]).

182 I also find helpful the observations made by the High Court in *Abex Centre Pte Ltd v Public Prosecutor* [2000] 1 SLR(R) 598 in relation to s 401(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), which was the predecessor to the current s 355(1) of the CPC and which did not provide for the unitary test of "extravagant and unnecessary" conduct:

> 13 The principle governing the exercise of the court's discretion under s 401(1) of the CPC was enunciated by this court in *Oh Cheng Hai v Ong Yong Yew* [1993] 3 SLR(R) 257 and affirmed in the recent case of *Arts Niche Cyber Distribution Pte Ltd v PP* [1999] 2 SLR(R) 936. The principle warrants repetition here. In *Arts Niche Distribution Pte Ltd v PP* … , it was said:
>
> > … The court has a wide discretion to order costs under this section [s 401(1) of the CPC]. In exercising its discretion, the court is entitled to take all the circumstances into account, including the strength of the Prosecution's case, the accused's knowledge of this,

> and his conduct of his defence. In particular, where the accused loses his case and the court is of the view that his defence has been conducted 'extravagantly and unnecessarily', he may be ordered to pay some of the costs which he has caused the Prosecution to incur (*Oh Cheng Hai v Ong Yong Yew* [1993] 3 SLR(R) 257 at [28]). One way of determining whether the accused's defence has been conducted 'extravagantly and unnecessarily' would be to consider whether the line of defence mounted has advanced his case: *Jasbir Kaur v Mukhtiar Singh* [1999] 1 SLR(R) 616. …
>
> …
>
> 15 It should be emphasised that although the strength of the defence, whether at trial or on appeal, is a relevant factor to be considered by the court in awarding costs, it is by no means conclusive. The important test is whether the accused had conducted his defence or appeal "extravagantly and unnecessarily". In applying this test, the facts of the case, the strength of the defence and course of conduct of the defence must be closely scrutinised.

Did the Appellant conduct his defence extravagantly or unnecessarily?

183 Applying these principles to the facts of this case, I do not find that the Appellant had conducted his defence extravagantly or unnecessarily.

Appellant's concession in the CFD

184 Whilst I agree with the District Judge's observation that the Appellant's CFD did not expressly dispute the fact that the monies were stolen properties,[102] I disagree with the legal effect he attributed to the Appellant's actions in this regard.

185 Section 169(1) of the CPC provides that:

> **Consequences of non-compliance with Division 2**

---

102 GD at [100]: see also Case for the Defence dated 18 September 2014 (ROP, vol 5, p 391) at para 13.

> **169.**—(1) The court *may draw such inference as it thinks fit* if —
>
> (*a*) the prosecution fails to serve the Case for the Prosecution on the accused or the defence fails to serve the Case for the Defence after the Case for the Prosecution has been served on the accused;
>
> (*b*) the Case for the Prosecution or the Case for the Defence does not contain any or any part of the items specified in section 162 or 165(1), respectively; or
>
> (*c*) the prosecution or *the defence puts forward a case at the trial which differs from or is otherwise inconsistent with* the Case for the Prosecution or *the Case for the Defence*, respectively, that has been filed.
>
> [emphasis added]

186 As is evident from the foregoing provision, the only consequence of an accused running a new defence after the submission of the CFD is that adverse inference may be drawn against him by the trier of fact. Such an inference will only go to the credibility or otherwise of the new defence. It should not be used to find that an accused person has run his defence extravagantly and unnecessarily.

Right to challenge the receipt of stolen properties

187 I also accept the Appellant's argument that it is his right to put the Prosecution to strict proof of its case against him.[103] As a direct application of the principle elucidated in *Jasbir Kaur* (see above at [181]), the Appellant cannot be penalised for obliging the Prosecution to prove every element of the offence he was charged with, including the fact that the six deposits represented "stolen properties".

---

103 Appellant's Skeletal Submissions at para 228.

188 Similar remarks have been made in Jennifer Marie and Mohamed Faizal, *The Criminal Procedure Code of Singapore: Annotations and Commentary* (Academy Publishing, 2012) at para 18.011:

> … The court possesses a wide discretion to order the accused to pay the costs of his prosecution upon his conviction. This is not to suggest that such orders ought to be made as a matter of course. On the contrary, the courts are acutely sensitive to the fact that *it is an accused's right to have the State produce the evidence and to put the Prosecution to strict proof of its case against him.* To that end, it is trite that an accused person would not be made to bear the costs of prosecution simply because he chose to claim trial, even if the Prosecution's case was strong…
>
> [emphasis added]

189 Most importantly, on the present facts, I am of the view that it is entirely unreasonable for the Prosecution to expect the Appellant to concede the material fact as to whether the deposits received by WEL were stolen properties. This fact is not something within the personal knowledge of the Appellant. Given that the Appellant's case in his CFD was that he had no knowledge of the criminal activities of WEL as he was merely a local resident director,[104] it would have been inconsistent for him to admit to the fact that WEL was indeed involved in criminal activities. Given the way he had run his defence, he could not possibly have agreed to a fact which he had no knowledge of. Accordingly, the Appellant's conduct in not conceding that the moneys were in fact stolen properties and in requiring the Prosecution to prove that fact cannot in my view be regarded as extravagant or unnecessary.

---

104 Case for the Defence dated 18 September 2014 (ROP, vol 5, p 393) at para 15.

Relevance of irrelevant cross-examination

190 In granting the costs order, the District Judge also took into account the irrelevant cross-examination conducted by Mr Dilip Kumar ("Mr Kumar"), the Appellant's then counsel at the trial below, in relation to the victims of the stolen properties. After perusing the notes of evidence below, I accept the finding that the cross-examination by Mr Kumar did not particularly challenge the issue as to whether the funds transferred by the victims constituted "stolen properties" for the purposes of s 411 of the Penal Code.

191 In my view, however, the cross-examination by Mr Kumar cannot be said to be extravagantly protracted or completely unnecessary. He spent an average of less than five minutes in the cross-examination of four of the victims, with the longest cross-examination lasting only seven minutes.[105] And the cross-examination was not entirely meritless as Mr Kumar had used the opportunity to demonstrate the Appellant's lack of direct involvement in the offences by establishing that none of the victims had recognised or dealt with the Appellant.[106] Having said that, I acknowledge that these were not the issues for which these witnesses were called to testify.

192 However, somewhat ironically, what I would consider to be an unnecessary conduct of defence would be if Mr Kumar had persisted in cross-examining the witnesses at length on the issue of "stolen properties" despite the strength of their testimony. After the examination-in-chief of a witness, where there is no inherent or credible weakness disclosed in the testimony, it will generally be completely unnecessary to undertake an extensive and lengthy

---

105 Prosecution's Sentencing Submissions (at the trial below) at para 42 (ROP, vol 4, pp 544–545).

106 See, *eg*, ROP, vol 1, pp 56 and 158.

cross-examination of the witness. Indeed, it will be artificial and counter-intuitive to expect the defence counsel to subsequently cross-examine at length on the relevant issue, just so as to avoid incurring costs payable to the other side. Thus, I am of the view that whilst it is the right of every accused person to hear all the incriminating evidence against him, the cross-examination of the witness should be waived or kept brief when the accused person is in no position to dispute the evidence and is merely putting the Prosecution to strict proof. Otherwise, the accused may run the risk of having costs awarded against him under s 355(1) of the CPC.

193 Further, the present case is very different from the previous cases where such costs have been awarded. For instance, in the private prosecution case of *Oh Cheng Hai v Ong Yong Yew* [1993] 3 SLR(R) 257 ("*Oh Cheng Hai*"), the High Court upheld the trial judge's order of costs on the basis that "the defence had persisted in challenging peripheral issues and the genuineness of each exhibit, the latter causing ultimately an expert witness to be sent from Japan in spite of the fact that the defence was innocent possession" (at [27]). Thus, the court upheld the costs order because the defence's case had almost nothing to do with its persistent challenge against the genuineness of the exhibits throughout the conduct of proceedings. Similarly, in *Arts Niche Cyber Distribution Pte Ltd v Public Prosecutor* [1999] 2 SLR(R) 936, the High Court upheld the trial judge's order of costs to the Prosecution because it was of the view that the Appellant's defence was "spurious" (at [55]), "self-contradictory and inherently incredible" (at [51]).

194 In stark contrast, however, the Appellant did not even attempt a defence to begin with on the issue of "stolen properties": all he asked was for the Prosecution to prove this issue, an important element of the CDSA offences faced by the Appellant. In fact, as I have alluded to earlier, the Appellant had to

hear the testimony of the victims as the facts relating to the deposits were not within his personal knowledge. Thus, the present case is unique in that the Appellant could neither confirm nor deny whether the monies were stolen properties; the Prosecution had to prove this without an admission from him. The Appellant also cannot be said to have been aware of the strength of the Prosecution's case before the victims testified (a relevant consideration in exercising the discretion to award costs to the Prosecution: *Oh Cheng Hai* at [28]). Furthermore, on the facts of this case, after the victims had testified, the Appellant no longer pursued any arguments at the trial below relating to the issue of "stolen properties" and was content to defend his conviction on the other elements.[107] In the overall analysis, I thus find that the Appellant's defence was neither conducted extravagantly nor unnecessarily.

195 For these reasons, I allow the Appellant's appeal against the imposition of the costs order granted by the District Judge.

Conclusion

196 For the reasons I have stated, I dismiss the Appellant's appeal against conviction but allow in part his appeal against sentence. I will reduce his sentence to an aggregate term of imprisonment of 12 months and impose an additional fine of S$50,000 (i/d ten weeks' imprisonment). I also allow the Appellant's appeal against the costs order. The disqualification order granted by the District Judge is to remain.

197 At the end of the day, I have some sympathies for the Appellant, as he can be said to be in some sense a "victim" of the offences masterminded by Nadia and the clients she introduced. But it must not be forgotten that he got

[107] Appellant's Written Submission dated 9 November 2015 (ROP, vol 3, pp 444–464).

himself into this position owing to his gross neglect and recklessness in the discharge of his duties as a director of WEL. He has to bear the consequences for his actions. This case serves as a timely reminder that local resident directors must be vigilant as they go about providing their services to their clients as non-executive directors. Local resident directors do have important responsibilities and duties which they must discharge with reasonable due diligence.

Chan Seng Onn
Judge

Hamidul Haq, Muslim Albakri and Ho Jun Yi (Rajah & Tann Singapore LLP) for the Appellant;
Gordon Oh and Stacey Fernandez (Attorney-General's Chambers) for the Prosecution;
Jerald Foo (Cavenagh Law LLP) as *amicus curiae*.

Annex

A.1 Provisions of the Penal Code (Cap 224, 2008 Rev Ed):

Punishment for culpable homicide not amounting to murder

304. Whoever commits culpable homicide not amounting to murder shall —

(*a*) if the act by which death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, be punished with —

(i) imprisonment for life, and shall also be liable to caning; or

(ii) imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning; or

(*b*) if the act is done with the ***knowledge*** that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death, be punished with imprisonment for a term which may extend to ***10 years***, or with fine, or with caning, or with any combination of such punishments.

Causing death by rash or negligent act

304A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished —

(*a*) in the case of a ***rash*** act, with imprisonment for a term which may extend to ***5 years***, or with fine, or with both; or

(*b*) in the case of a ***negligent*** act, with imprisonment for a term which may extend to ***2 years*** , or with fine, or with both.

Punishment for voluntarily causing hurt

323. Whoever, except in the case provided for by section 334, ***voluntarily*** causes hurt, shall be punished with imprisonment for a term which may extend to ***2 years***, or with fine which may extend to $5,000, or with both.

Causing hurt by an act which endangers life or the personal safety of others

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished —

(*a*) in the case of a ***rash*** act, with imprisonment for a term which may extend to ***one year***, or with fine which may extend to $5,000, or with both; or

(*b*) in the case of a ***negligent*** act, with imprisonment for a term which may extend to ***6 months***, or with fine which may extend to $2,500, or with both.

Punishment for voluntarily causing grievous hurt

325. Whoever, except in the case provided for by section 335, ***voluntarily*** causes grievous hurt, shall be punished with imprisonment for a term which may extend to ***10 years***, and shall also be liable to fine or to caning.

Causing grievous hurt by an act which endangers life or the personal safety of others

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished —

(*a*) in the case of a rash act, with imprisonment for a term which may extend to ***4 years***, or with fine which may extend to $10,000, or with both; or

(*b*) in the case of a negligent act, with imprisonment for a term which may extend to ***2 years***, or with fine which may extend to $5,000, or with both

[emphasis added in bold italics]

A.2 Provisions of the Road Traffic Act (Cap 276, 2004 Rev Ed):

Reckless or dangerous driving

64.—(1) If any person drives a motor vehicle on a road ***recklessly***, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the

amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $3,000 or to imprisonment for a term not exceeding ***12 months*** or to both and, in the case of a second or subsequent conviction, to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 2 years or to both.

Driving without due care or reasonable consideration

65. If any person drives a motor vehicle on a road —

(a) without due care and attention; or

(b) without reasonable consideration for other persons using the road,

he 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*** or to both 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.

Causing death by reckless or dangerous driving

66.—(1) Any person who causes the death of another person by the driving of a motor vehicle on a road ***recklessly***, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding ***5 years.***

[emphasis added in bold italics]

A.3 Provisions of the Immigration Act (Cap 133, 2008 Rev Ed):

Offences

57.—(1) Any person who —

...

(*d*) harbours a person —

(i) whom the defendant ***knows*** has acted in contravention of the provisions of this Act or the regulations;

(ii) with ***reckless disregard*** as to whether he has acted in contravention of the provisions of this Act or the regulations; or

(iii) ***negligently*** failing to ascertain as to whether he has acted in contravention of the provisions of this Act or the regulations;

…

shall be guilty of an offence and —

…

(iv) in the case of an offence under paragraph ***(d)(i) or (ii)***, shall on conviction be punished with imprisonment for a term of not less than 6 months and not more than ***2 years*** and shall also be liable to a fine not exceeding $6,000;

(v) in the case of an offence under paragraph ***(d)(iii)***, shall be liable on conviction to a fine not exceeding $6,000 or to imprisonment for a term not exceeding ***12 months*** or to both;

[emphasis added in bold italics]

A.4 Provisions of the Electricity Act (Cap 89A, 2002 Rev Ed):

Offences relating to electrical or supply installations

83.—(1) Any person who supplies electricity to any premises without an electrical or a supply installation licence shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 years or to both.

(2) Any person who ***wilfully*** tampers with or adjusts any electrical or supply installation or any part thereof so as to cause or to be likely to cause danger to human life or damage to any property shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding ***5 years***.

(3) Any person who, by ***rash or negligent*** act or omission committed or omitted in respect of any electrical or supply installation or any part thereof under his control, causes hurt to any person or damage to any property shall be guilty of an

offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding ***3 years*** or to both.

[emphasis added in bold italics]

A.5 Provisions of the Civil Defence Act (Cap 42, 2001 Rev Ed):

Causing irrecoverable loss of service property

37A.—(1) Any person who ***wilfully*** causes the irrecoverable loss of any service property shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding ***3 years*** or any other punishment authorised by this Act.

(2) Any person who, by any **negligent** act or omission, causes the irrecoverable loss of any service property shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding ***2 years*** or any other punishment authorised by this Act.

[emphasis added in bold italics]