IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 166

Criminal Case No 53 of 2018

Between

Public Prosecutor

And

Ewe Pang Kooi

JUDGMENT

[Criminal Law] — [Offences] — [Criminal breach of trust by agent] — [Sentencing]

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Public Prosecutor
v
Ewe Pang Kooi

[2019] SGHC 166

High Court — Criminal Case No 53 of 2018
Chan Seng Onn J
28 May 2019

16 July 2019 Judgment reserved.

Chan Seng Onn J:

Introduction

1 Driven by an insatiable appetite for gambling, Ewe Pang Kooi ("the accused") pilfered about $41 million from his unwitting victims who had entrusted him to manage their affairs and finances over the course of about ten years.[1] Till date, after accounting for sums which the accused had deposited back into the victim companies, about $24 million remain unrecovered.[2] It is fair to say that one man's gambling habit came at a great price for many.

2 In *Public Prosecutor v Ewe Pang Kooi* [2019] SGHC 72 ("Ewe conviction judgment"), I convicted the accused on all 50 charges under s 409 of the Penal Code (Cap 224, 22 charges under the 1985 Rev Ed; 28 charges under

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1 *PP v Ewe Pang Kooi* [2019] SGHC 72 at [27].

2 Exhibit P124A.

the 2008 Rev Ed) (collectively, "PC"). Collectively, the 50 charges relate to the $41 million which the accused had misappropriated from his victims.

3 The prescribed sentence under s 409 PC is life imprisonment or an imprisonment term of up to 20 years. The imprisonment term was raised from ten years to 20 years in the 2008 Penal Code amendments (see Penal Code (Amendment) Act 2007 (No. 51 of 2007), First Schedule at (34)). Such grave penalties reflect the severity of the offences which the accused has been charged with and convicted of.

Methodology in sentencing

4 In determining the appropriate sentence for the accused, I note that the court in *Public Prosecutor v Teo Cheng Kiat* [2000] SGHC 129 ("*Teo Cheng Kiat*") stated at [26] that in cases "where there are multiple charges, it is of no real practical significance what the individual sentences ought to be" ("the global approach").

5 While the end result may not differ significantly, as Chao Hick Tin JA (as he then was) observed in *Public Prosecutor v Syamsul Hilal bin Ismail* [2012] 1 SLR 973 at [27], determining the appropriate sentence for each charge is necessary for the court to properly comprehend the overall criminality of the offender. Only thereafter can the court determine the appropriate global sentence. Doing otherwise would be like putting the cart before the horse.

6 I therefore adopt the approach in *Mohammed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998, whereby it was noted that sentencing takes place in two steps: first, I will consider the appropriate individual sentence for each charge. In arriving at each sentence, I shall generally have regard to the aggravating and mitigating factors, as well as the relevant sentencing

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precedents. Second, in determining which of the sentences ought to run consecutively and whether the individual sentences for those charges ordered to run consecutively (which directly impact the total sentence) ought to be adjusted, I shall have regard to, *inter alia*, the one-transaction rule and the totality principle.

Sentences for individual offences

7 To arrive at the sentence for each of the accused's 50 offences, I have considered the relevant sentencing precedents for criminal breach of trust ("CBT"), as well as the aggravating and mitigating factors in this case.

The preliminary sentence

8 In *Wong Kai Chuen Philip v PP* [1990] 2 SLR(R) 361 ("*Philip Wong*"), Chan Sek Keong J (as he then was) observed at [18]:

> In an offence like criminal breach of trust, it is a matter of common sense that, all other things being equal, the larger the amount dishonestly misappropriated the greater the culpability of the offender and the more severe the sentence of the court.

9 Hence, in CBT offences, the key indicator of the harm perpetrated as well as the culpability of the offender is the amount misappropriated. After this is determined, a preliminary sentence may be derived. Following which, discounts or uplifts to the preliminary sentence may be allowed in the particular case depending on the aggravating and mitigating factors of each case.

Dataset of s 409 PC cases

10 With the above in mind, I proceed to review the following s 409 PC cases (**outliers highlighted in yellow; see [11] to [13] below**):

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Case	Amount misappropriated (Per charge) (S$)	Sentence (Months)	Notes
Sarjit Singh s/o Mehar Singh v PP [2002] 2 SLR(R) 1040 Claimed trial	4,815.24	36	
Viswanathan Ramachandran v PP [2003] 3 SLR(R) 435 Claimed trial	18,000 (estimated, amount misappropriated was US$9,000)	15	Sentence to run concurrently with an 18 months' imprisonment term for a s 406 PC charge involving US$35,000. Global sentence of 18 months' imprisonment.
Tan Tze Chye v PP [1997] 2 SLR 505 Claimed trial	1,000 500	3 0.75	Sentences to run concurrently. Global sentence of 3 months' imprisonment.
PP v See Lee Fong (District Arrest Case No 003057/2014 & others) Pleaded guilty	2,348	4	
PP v Sunny Choo Kay Huat (District Arrest	4,400	2	

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Case No 033626/2012 & others) Pleaded guilty			
PP v See Boon Kwang [2003] SGDC 66 Claimed trial	5,000	9	Sentences to run consecutively. Global sentence of 18 months' imprisonment.
	8,369.80	9	
PP v Chan Weng Lim (MA/134/94/01) Claimed trial	15,000	36	
PP v Tan Chong Pang Victor (District Arrest Case No 047721/2008 & others) Pleaded guilty	32,484	30	Sentence to run consecutively with a 24 months' imprisonment term for a s 406 PC charge involving $73,795.50. Global sentence of 54 months' imprisonment.
Muthukumaran Ramaiyan v PP [2015] SGHC 230 Claimed trial	24,000	8	Restitution of $8,000 made
PP v Leong Wai Nam [2010] 2 SLR 284	4,000	12	Consecutive
	1,300	10	Concurrent
	1,500	10	Concurrent

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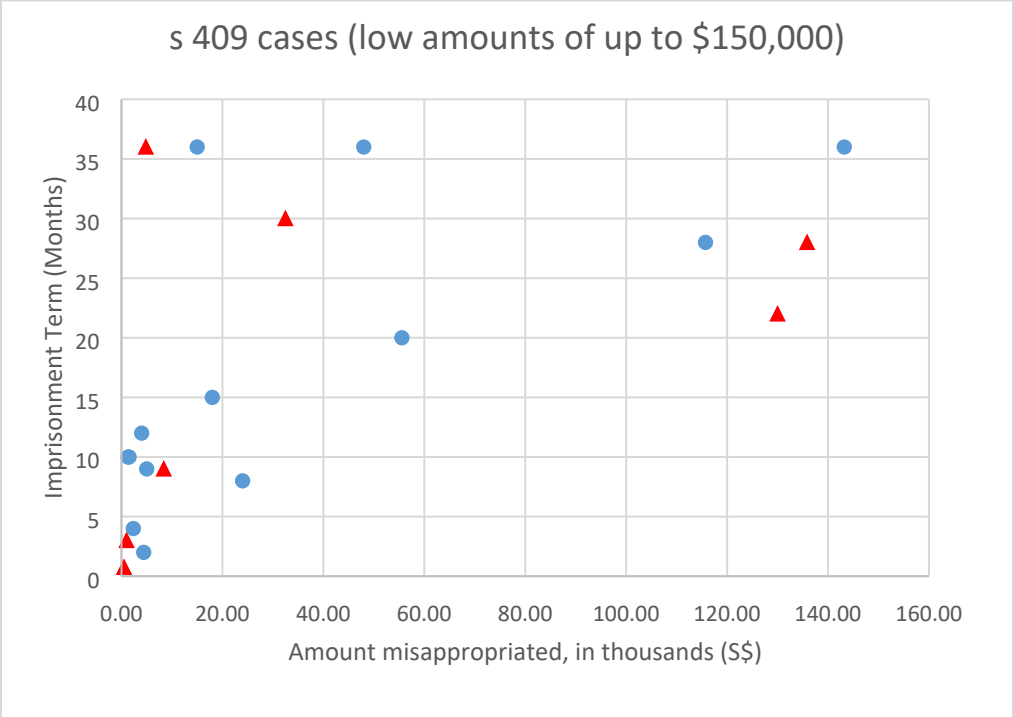
Pleaded guilty	48,000	36	Consecutive
Francis Wee Lam Khoon v PP (MA 332/96/01) Pleaded guilty	55,561.29	20	Sentence to run consecutively with a 16 months' imprisonment term for a s 408 PC charge involving $35,687. Global sentence was 36 months.
PP v Eugene Sim (District Arrest Case No 932514/2016 & 1 other) Pleaded guilty	135,846.68	28	Other s 409 PC charges involving $84,567.92 taken into consideration ("TIC") for sentencing; total sum of 220,414.60 misappropriated. Global sentence of 28 months. No restitution.
PP v Guo Linnan (District Arrest Case No 940366/2015 & others) Pleaded guilty	130,000	22	Restitution of $94,767.45 (approximately 72.9% of amount misappropriated).
PP v Mohammed Rafi bin Abdul Rashid [2016] SGDC 271 Pleaded guilty	115,715.76	28	No restitution.
Wong Kai Chuen Philip v PP	143,220.15	36	Sentences to run

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[1990] 2 SLR(R) 361 Pleaded guilty	683,039.40	36	consecutively. Global sentence of 72 months for misappropriating a total of $1.84m (including TIC-ed charges). No restitution.
PP v Tan Cheng Yew and another appeal [2013] 1 SLR 1095 Claimed trial	1,500,000	72	Sentences to run consecutively. Global sentence of 144 months' imprisonment. No restitution.
	1,940,724.97	72	

11 Plotting the cases involving amounts of up to $150,000 on a graph, it can be seen that certain cases buck the trend and may be regarded as outliers, to which no weight ought to be given in determining the appropriate preliminary sentence (see **Graph 1: four outliers marked as red triangular points**):

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Graph 1

12 When all the cases are plotted on a graph (*ie,* not limited to cases up to $150,000), it can also be seen that, apart from the four red triangular points marked above, an additional point (new outlier identified and marked as a yellow rectangular point) also bucks the trend (see **Graph 2: four earlier outliers marked as red triangular points, one new outlier marked as a yellow rectangular point**):

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Graph 2

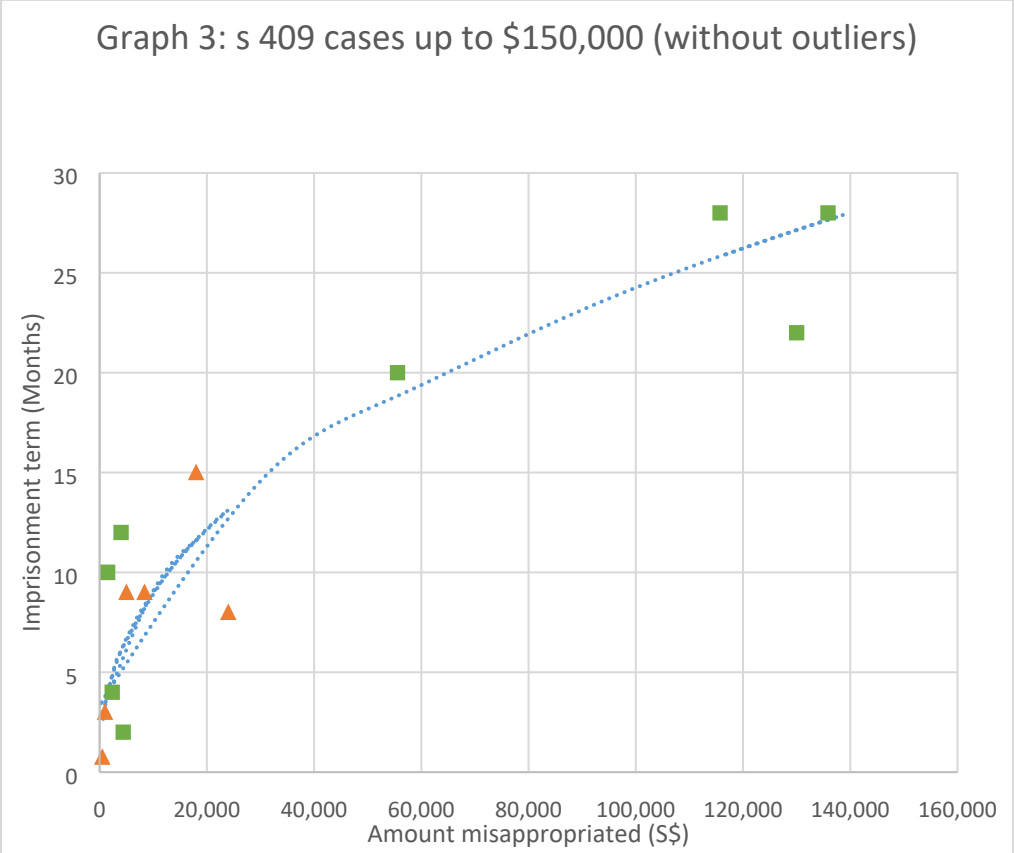
13 The new outlier, marked as a yellow rectangular point, represents the 36 months' imprisonment term which the accused in *Philip Wong* received for a s 409 PC charge involving $143,220.15. It may be contrasted with the 28, 22 and 28 months' imprisonment terms which the accused persons in *Public Prosecutor v Eugene Sim* (District Arrest Case No 932514/2016 & 1 other), *Public Prosecutor v Guo Linnan* (District Arrest Case No 940366/2015 & others) and *Public Prosecutor v Mohammed Rafi bin Abdul Rashid* [2016] SGDC 271 received for s 409 PC charges involving $135,846, $130,000 and $115,716 respectively. As the accused persons in all four cases pleaded guilty, the new outlier may be caused by two factors: (a) first, *Philip Wong* is a relatively dated case, and the sum of $148,220.15 would have been a lot more significant in 1990 than it is today. Second, and more crucially, the accused in *Philip Wong* faced two s 409 PC charges, with the other charge involving

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$683,039.40. For the $683,039.40 charge, the judge also sentenced the accused to 36 months' imprisonment, which sentence was to run consecutively with the sentence for the $148,220.15 charge, giving the offender a global sentence of 72 months' imprisonment. Hence, it is likely that the judge in *Philip Wong* similarly adopted the global approach advocated in the later case of *Teo Cheng Kiat,* such that little regard was given to the individual sentences in the case.

Best fit curves for s 409 cases (without outliers)

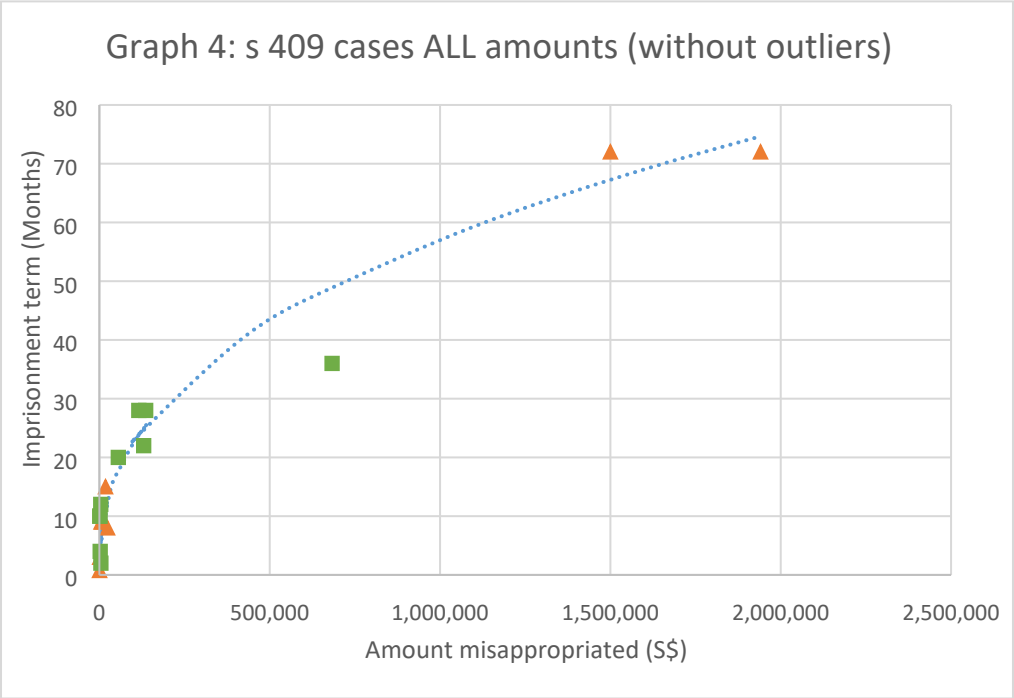
14 Disregarding the five highlighted outliers, the following best fit curves for the s 409 PC cases are revealed (see **Graphs 3 and 4**):



Graph 3

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Legend to Graph 3	
Blue dotted curve	Best fit curve for s 409 PC cases (without outliers) for amounts up to $150,000
Orange triangles	Contested s 409 PC cases for amounts up to $150,000 (without outliers)
Green rectangles	Uncontested s 409 PC cases for amounts up to $150,000 (without outliers)



Graph 4

Legend to Graph 4	
Blue dotted curve	Best fit curve for s 409 PC cases (without outliers) for amounts up to $2,000,000
Orange triangles	Contested s 409 PC cases (without outliers)

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Green rectangles	Uncontested s 409 PC cases (without outliers)

15 Evaluating the respective best fit curves as depicted by the blue dotted curves in Graphs 3 and 4, it can be seen that the sentences for s 409 PC offences do not bear a directly linear relationship with the sums involved (see also *Public Prosecutor v Tan Cheng Yew and another appeal* [2013] 1 SLR 1095 at [184]). Furthermore, while s 409 PC offences are punished harshly from the get-go, the sentences appear to increase more sharply for the lower sums, and the rate of increase in the sentence trails off as the amount misappropriated increases. This does not mean that the harm or culpability trails off as the sums increase. Rather, it is a reflection of the limited lifespan of an individual, which prohibits a directly linear relationship between the sums misappropriated and the length of the sentences imposed.

16 Furthermore, while the cases analysed largely pre-date the 2008 amendments to the PC, whereby the sentencing range for s 409 PC was increased from ten years' imprisonment to 20 years' imprisonment, I find that this amendment is not intended to make sentences for s 409 PC cases more stringent and to invalidate the existing precedents for the section. To be clear, the maximum sentence for s 409 PC was and still is life imprisonment. The amendments only increase the maximum term of imprisonment (from ten years to 20 years' imprisonment) in a case where life imprisonment is *not* meted out. This expands the sentencing band for judges, and helps ensure that cases which warrant a sentence of more than ten years' imprisonment (but which do not warrant a life imprisonment term) may be met with the appropriate sentence of up to 20 years' imprisonment. Hence, the precedents which pre-date the amendments remain relevant insofar as they continue to serve as a good guide

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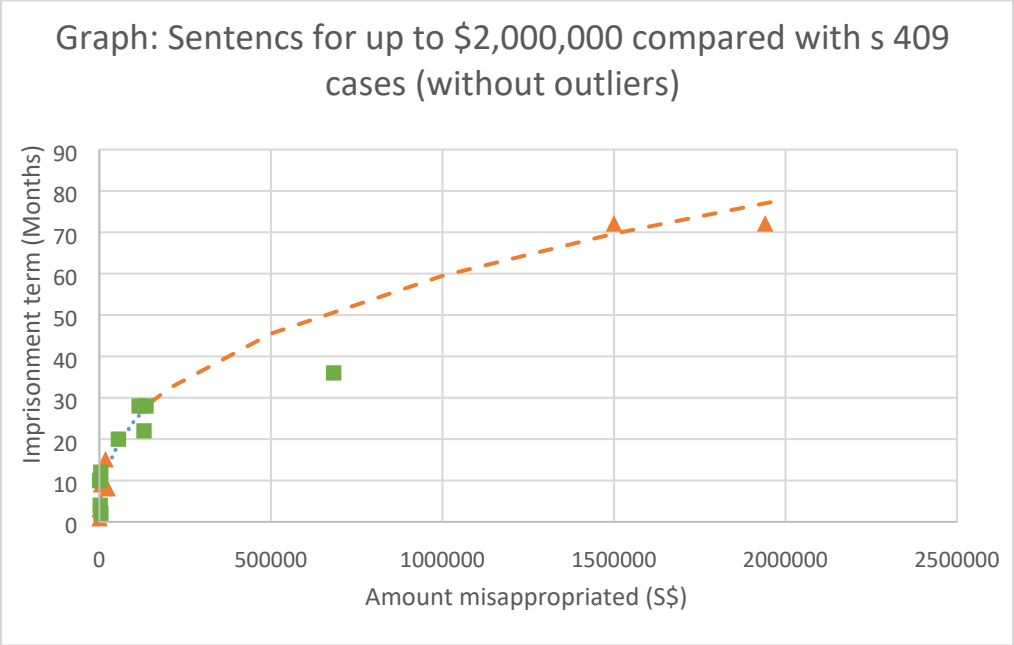
as to what the appropriate sentence ought to be in cases where life imprisonment is not meted out.

17 This was in fact Parliament's intention when the 2008 amendments to the PC were passed. During the second reading of the Penal Code (Amendment) Bill, it was noted as follows (*Singapore Parliamentary Debates, Official Report* (23 October 2007) vol 83, at col 2439 (Assoc Prof Ho Peng Kee, Senior Minister of State for Home Affairs):

> … we must leave it to the courts to mete out punishment. … This is the point that I want to address when Mr Lim Biow Chuan asks whether what we have done will lead automatically to fines or punishments going up. I do not think so. He has mentioned, for example, the benchmarks, the sentencing guidelines, that the courts have. *I think the guidelines will continue. It does not mean that automatically when the maximum punishment is raised, the punishment will go up.* Because every punishment must depend on the facts of the case. And I think the new Chief Justice has mentioned that the punishment should fit the crime as well as the offender… [emphasis added]

18 Hence, applying the equations derived from the respective blue dotted curves in Graphs 3 and 4, which reflect the s 409 PC precedents (with appropriate adjustments to Graph 4 to ensure the meeting of both best fit curves at the $150,000 mark), the following graph presents the appropriate preliminary sentence for amounts up to $2,000,000 (**Graph 5**):

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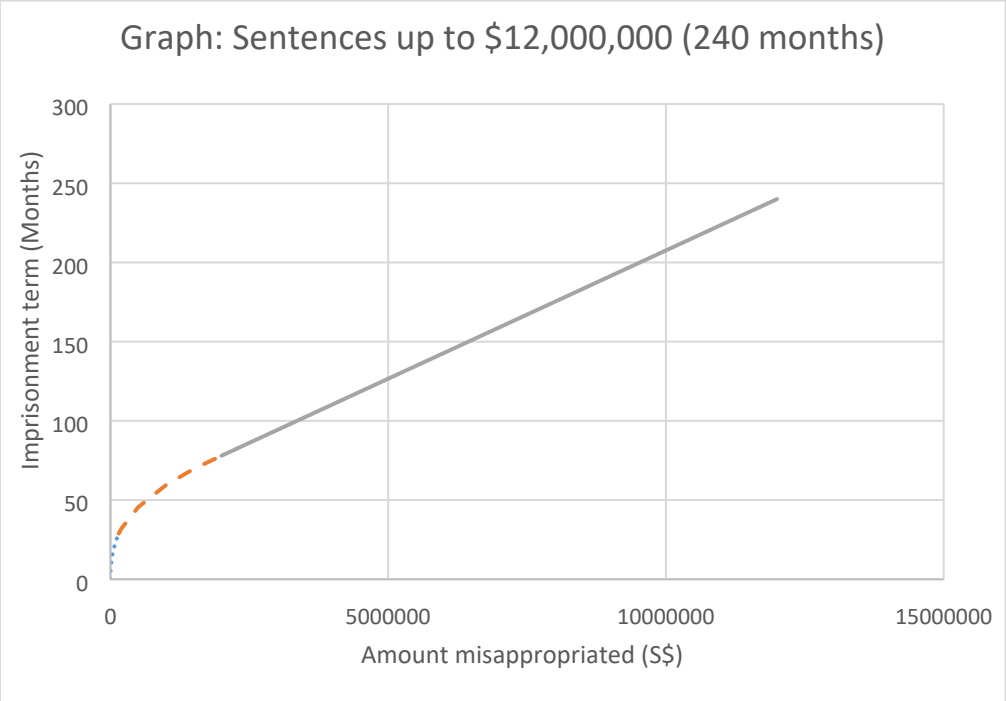
Graph 5

Legend to Graph 5	
Blue dotted curve	Sentences for amounts up to $150,000 **Note 1:** Identical to curve in Graph 3
Orange dashed curve	Sentences for amounts from $150,000 to $2,000,000 **Note 2:** Same shape as curve in Graph 4, with appropriate adjustment to ensure meeting of the curve with the blue dotted line (curve in Graph 3)
Orange triangles	Contested s 409 PC cases (without outliers)
Green rectangles	Uncontested s 409 PC cases (without outliers)

19 For the s 409 PC charges involving amounts exceeding $2,000,000, there is a lack of precedents to guide the determination of the appropriate sentence for each charge. This stems from the frequent application of the global

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approach advocated in *Teo Cheng Kiat* for cases involving larger sums. Nonetheless, as noted above, after the 2008 amendments to the PC, the maximum sentence (less life imprisonment) for s 409 PC is now 20 years' imprisonment. With this in mind, and utilising the gradient at the highest point of the orange dashed curve in Graph 5 above (*ie,* the curve for sentences for amounts from $150,000 to $2,000,000) and projecting that line linearly upwards, I arrive at the following sentencing curve for s 409 PC (**Graph 6)**:



Graph 6

Legend to Graph 6	
Blue dotted curve	Sentences for amounts up to $150,000
Orange dashed curve	Sentences for amounts from $150,000 to $2,000,000

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Grey straight line	Sentences for amounts from $2,000,000 to $12,000,000

20 Reflecting the curves and line in formulaic terms, the preliminary sentences for s 409 PC cases can be classed into the following sentencing bands:

(a) **Band 1:** Amounts up to $150,000: $y = 0.1724x^{0.4296}$, where y is the preliminary sentence in months, and x is the amount of dollars misappropriated under the particular s 409 PC charge;

(b) **Band 2:** Amounts from $150,000 to $2,000,000: $y = (0.2105x^{0.4055}) + 2.42$;

(c) **Band 3:** Amounts from $2,000,000 to $12,000,000: $y = \left(\frac{(x - 2{,}000{,}000)}{10{,}000{,}000} \times 162\right) + 78$.

21 As can be seen from Graph 6 and the formula for Band 3, the preliminary sentence for an individual s 409 PC charge involving $12,000,000 is the maximum of 20 years' (240 months) imprisonment. In cases where the offender faces charge(s) involving sums exceeding $12,000,000, the discretion lays with the sentencing judge, after considering the aggravating and mitigating factors of the case, as well as the totality principle, to impose a life imprisonment term on the offender.

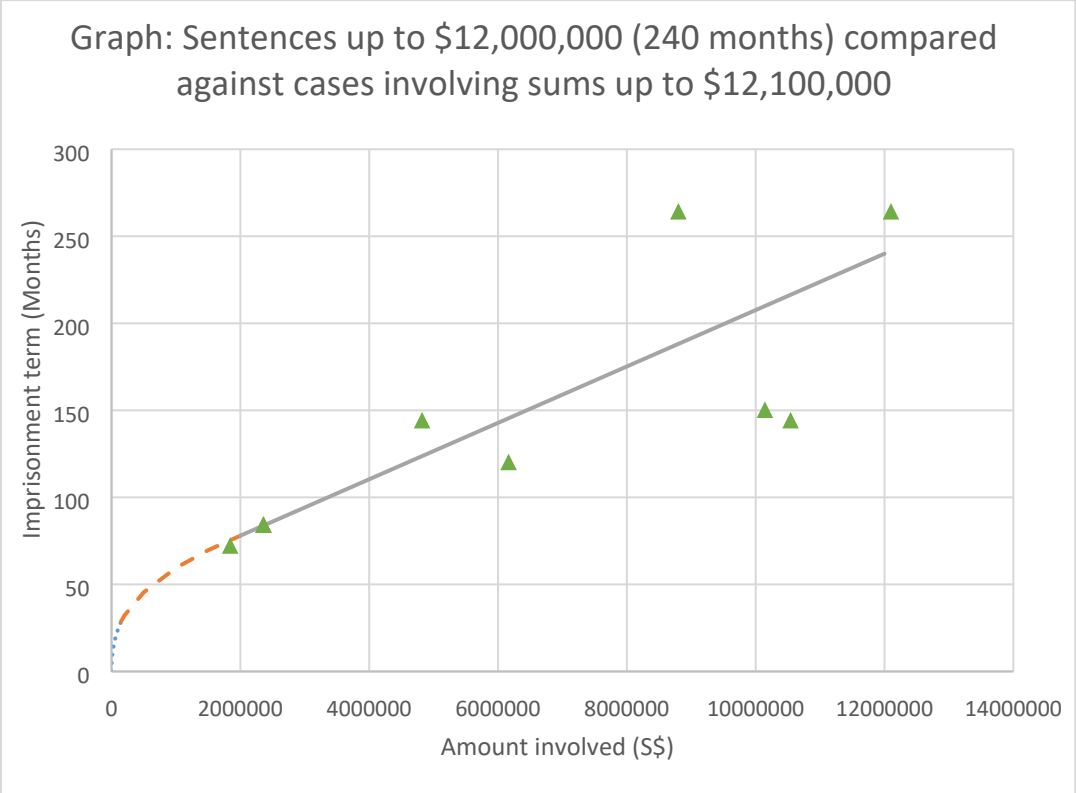
22 That $12,000,000 is the point whereby the preliminary sentence is 20 years' imprisonment is broadly in accordance with the following cases of financial crime involving large sums of money, which serve as good guideposts as to whether the preliminary sentence proposed is excessive or inadequate (**Graph 7**):

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Case	Nature of charges	Gross Amount involved	Net Amount involved (After accounting for recovered sums/restitution)	Sentence (Years)
PP v Lam Chen Fong [2002] 2 SLR(R) 599	s 409 (CBT as agent)	8,800,000	7,790,000	22
Wong Kai Chuen Philip v PP [1990] 2 SLR(R) 361	s 409 (CBT as agent)	1,841,232.36	1,841,232.36	6
PP v Tan Cheng Yew and another appeal [2013] 1 SLR 1095	s 409 (CBT as attorney)	4,820,724.97	4,820,724.97	12
PP v Teo Cheng Kiat [2000] SGHC 129	s 408 (CBT as servant)	35,000,000	14,000,000	24
PP v Koh Seah Wee and another [2012] 1 SLR 292	s 420 (Cheating)	12,100,000	3,470,000	22
PP v Chia Teck Leng [2004] 4 SLR(R) 39	s 420 (Cheating) and s 467 (Forgery of valuable security)	117,000,000	82,300,000	42
PP v Setho Oi Lin @ Setho Irene [2018] SGDC 82	s 420 (Cheating)	10,541,530	6,891,530	12
PP v Linda Lee (Unreported; HC/MA 9288/2017)	s 420 (Cheating)	10,143,300	9,233,075.64	12.5

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PP v Koh Chek Seng (Unreported)	s 420 (Cheating)	6,163,771	6,163,771	10
PP v Don Brendan Robert [2016] SGDC 208	s 420 (Cheating)	2,357,986	2,357,986	7



Graph 7

Legend to Graph 7	
Blue dotted curve	Sentences for amounts up to $150,000
Orange dashed curve	Sentences for amounts from $150,000 to $2,000,000
Grey straight line	Sentences for amounts from $2,000,000 to $12,000,000

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Green triangles	Cases of financial crimes involving up to $12,100,000 (Gross amount) **Note 1:** *PP v Teo Cheng Kiat* [2000] SGHC 129 and *PP v Chia Teck Leng* [2004] SGHC 68 are excluded as they involve far larger gross sums, and their inclusion would extend the x-axis (amount involved) significantly, thereby making it difficult to see the relationship between the cases and the sentencing trend-line.

23 Prior to turning to the aggravating and mitigating factors, which can be used to calibrate the preliminary sentence upwards or downwards, I caution that the preliminary sentences which are derived from the curves or their attendant formulas apply to contested s 409 PC cases, meaning cases where convictions are entered following trial. There are two reasons for this, as explained in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [40]:

> The first is based on sentencing theory. The mitigating value of a plea of guilt cannot be fixed, but is personal to the particular *offender*, and it is affected by factors such as the degree of remorse displayed and the extent to which the offender had "no choice" but to plead guilty because he had been caught *in flagrante delicto* … The second is an argument based on constitutional principle. The law accords every accused person a basic right to plead not guilty and to claim trial to a charge (see *Kuek Ah Lek v PP* [1995] 2 SLR(R) 766 at [65]). If the benchmarks were set by reference to uncontested cases then it would follow that an uplift should be applied where an offender claims trial. This would lead to the "appearance" that offenders who claim trial are being penalised for exercising their constitutional right to claim trial (see, generally, the decision of the New South Wales Court of Criminal Appeal in *R v Henry* [1999] NSWCCA 111 at [333] *per* Simpson J). [emphasis in original]

24 It is noted that the same court in *Terence Ng* noted at [41] that, in the appropriate case whereby "the 'typical case' is one where the charge is uncontested, … fixing the benchmark sentence by reference to an uncontested

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case [would] make eminent sense". Of the 16 s 409 PC cases analysed, seven were contested, while nine were uncontested. Discounting the five s 409 PC cases which were regarded as outliers, five cases were contested, while seven were uncontested. Therefore, similar to the case of *Terence Ng*, whereby of the 25 rape cases analysed, it was an almost even split whereby 13 cases were contested while 12 were uncontested, it cannot be said that the typical s 409 PC case is uncontested. Furthermore, as seen in Graphs 3 and 4 at [14] above, it is not the case that the sentences in uncontested cases are consistently lighter than the sentences in contested cases involving similar amounts. Rather, the sentences in uncontested and contested cases fall on *both* sides of the respective best fit curves in Graphs 3 and 4.

25 Hence, prudence requires that the preliminary sentences apply to contested cases, with appropriate discounts to be made in uncontested cases, depending on the degree of remorse shown by an offender who pleads guilty.

Aggravating and mitigating factors

Aggravating factors

26 Turning to the aggravating factors, the first aggravating factor is the significant degree of premeditation in this case (*Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [22]). In each of the charges, the accused devised a complex scheme which involved a mix of cash payments and encashment of cheques into various company bank accounts which he controlled (see the Annex to Ewe conviction judgment). The careful planning on the accused's part is therefore apparent.

27 Furthermore, to avoid detection, the accused would use moneys from the bank accounts of his various victims to reinstate the amounts that he had

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taken from other companies (Ewe conviction judgment at [16]). This allowed his scheme to go undiscovered for almost ten years, from February 2002 to July 2012. Such active and consistent steps taken to avoid detection for a prolonged period is a further aggravating factor: *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 at [42]–[43].

28 The offence also adversely impacts the integrity of the local economic infrastructure, and constitutes one of the most severe forms of abuse of authority (*Law Aik Meng* at [24(c)] and [24(e)]). As the Prosecution highlighted in their submissions, the role of a liquidator in our corporate and financial system is vital, and great trust is placed on them to carry out their functions honestly and fairly, as seen by the provision that liquidators take over all the assets and liabilities of a company during the winding-up process.[3] In all of the accused's offences, he had, whether as liquidator, receiver, or manager of his clients, abused the significant amount of trust they placed on him to manage their financial affairs with integrity. Instead, he helped himself to the large sums of money which he had access to by virtue of the various capacities he held. It is of utmost importance that the law comes down harshly to deter such conduct involving criminal breach of trust by those entrusted with property in the way of their business as professional agents. Such conduct, if left to proliferate, would "erode the open halls of trust and erect the high walls of suspicion" and could "lead to ever more stringent checks … on honest businesses with the attendant impact in terms of time and costs" (*Public Prosecutor v Chia Teck Leng* [2004] SGHC 68 ("*Chia Teck Leng*") at [42]). More importantly, it would severely tarnish Singapore's reputation as a financial and business hub of the region.

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3 Prosecution's Submission on Sentencing at para 17.

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29 Finally, the accused's offences affected several victims (*Law Aik Meng* at [25(e)]. The 50 charges which the accused was convicted of involve the misappropriation of funds which rightfully belonged to 22 companies and one individual. This amounts to dishonesty on a large scale, with the attendant impact of his misdeeds suffered by many victims, as about $24 million remains unrecovered.[4]

Mitigating factors

30 I give weight to the full co-operation provided by the accused throughout the investigations. Once his ruse was discovered, he assisted the investigation officers and explained each of the transactions he was involved in, thereby shedding light on the full extent of his criminal enterprise. Furthermore, while the accused claimed trial, he had, together with the Prosecution, agreed to a comprehensive statement of facts which detailed the material facts in relation to all 50 charges.[5] As a result, the sole dispute during trial was the narrow issue of whether the accused had dishonestly misappropriated money "in the way of his business *as an agent*" within the meaning of s 409 PC (Ewe conviction judgment at [42]).

31 I also give some allowance for the indirect partial restitution furnished by the accused. As part of his attempts to cover up his misappropriation from his respective victims, the accused deposited in excess of $17 million back into the various entities. Hence, while about $41 million was misappropriated by him, the *net* shortfall, which represents the actual loss to the victims, is about $24 million.[6]

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4 Exhibit P124A.

5 See Statement of Agreed Facts.

6 Exhibit P124A.

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32 Next, I recognise that the accused is untraced. However, I caution that less weight is given in this case than in an ordinary case, given that the accused has been charged with multiple offences which were committed over a long period of time (see *Chen Weixiong Jerriek v Public Prosecutor* [2003] 2 SLR(R) 334 at [17]). Nonetheless, some weight is accorded to this factor as "where a person of mature age commits a first offence some credit might be given for the fact that he has passed most of his life with a clean record and the prospects for rehabilitation may also be taken to be better." (*Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 ("*Yap Ah Lai*") at [89])

33 The Defence tendered a report from Winslow Clinic which stated that the accused was "suffering from an untreated Gambling Disorder" which "took on a life of its own and clouded his judgment".[7] I do not find this to be a mitigating factor. In *Koh Chee Tong v Public Prosecutor* [2016] SGHC 192 at [8]–[10], See Kee Oon JC (as he then was) noted that unless a person's gambling disorder had a direct causal link to his commission of the offences, "specific deterrence remains relevant notwithstanding the existence of a mental disorder." While it is undisputed that much of the amounts misappropriated by the accused were used to fund his gambling habit, this does not in any way reduce the accused's culpability. As observed in the report from Winslow Clinic, the accused himself informed that "after he lost money gambling, he would use his clients' money to cover and pay off first, as well as to continue to gamble. The pattern has been repeated for so long that it has become automatic."[8] This reveals how the accused had allowed his gambling addiction to not only take control of his personal finances, but also ruin him to the extent that he saw fit to use moneys from his clients' account to cover his losses and to continue feeding

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7 Plea in Mitigation in Sentence, Tab A, p 4 at para 13.

8 Plea in Mitigation in Sentence, Tab A, p 3 at para 8.

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his own gambling habit. In essence, the accused was driven by personal greed and the need to fuel his gambling habit to commit the offences which he did. In so doing, the accused knowingly used moneys which were entrusted in him for his personal vices which had clouded his good judgment. At best, this undiagnosed gambling addiction provides the motivation for the accused's offences. Without a *direct causal link* to his commission of the offences, I cannot see how it can in any sense be deemed mitigating (see also *Public Prosecutor v Lam Chen Fong* [2002] 2 SLR(R) 599 at [29] and *Chia Teck Leng* at [36]).

Final sentences for each s 409 PC charge

34 Having considered the aggravating and mitigating factors of the case, I note the need for the court to come down harshly on the accused so as to deter likeminded offenders who, by virtue of their elevated position of trust, are given access to large sums of money which may be misappropriated for their personal gain. Nonetheless, I also note that the accused had cooperated fully during the investigations and had not disputed the facts in court, thereby saving the investigative authorities and the court a significant amount of time and resources. Furthermore, the net loss to his victims is about $24 million, even though the charges disclose that a total of about $41 million had been misappropriated. Accordingly, I find that a 15% discount from each of the preliminary sentences is appropriate.

35 Applying the formulas which reflect the sentencing curves for s 409 PC cases (at [20] above), the final sentence (in months) for each of the 50 charges which the accused had been convicted of are as follows:

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Charge	**TRC No/2015**	**Offence**	**Capacity**	**Amount (S$)**	**Preliminary Sentence (Months)** **Without any discounting**	**Final Sentence (Months)** **With 15% discount, rounded to the nearest whole month**
1	900001	409 (1985 Rev Ed)	Liquidator of 21 companies	$ 120,000	26.2152	22
2	900004	409 (1985 Rev Ed)		$ 8,000	8.19039	7
3	900005	409 (1985 Rev Ed)		$ 500,000	45.4909	39
4	900006	409 (1985 Rev Ed)		$ 3,000	5.37413	5
5	900007	409 (1985 Rev Ed)		$ 150,000	28.8527	25
6	900008	409 (1985 Rev Ed)		$ 8,000	8.19039	7
7	900010	409 (1985 Rev Ed)		$ 717,000	52.27	44

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8	900009	409 (1985 Rev Ed)		$ 10,000	9.01441	8
9	900012	409 (1985 Rev Ed)		$ 70,000	20.7966	18
10	900011	409 (1985 Rev Ed)		$ 85,000	22.6056	19
11	900014	409 (1985 Rev Ed)		$ 2,055,000	78.891	67
12	900013	409 (1985 Rev Ed)		$ 27,000	13.8118	12
13	900016	409 (1985 Rev Ed)		$ 163,000	29.7597	25
14	900015	409 (1985 Rev Ed)		$ 1,365,000	67.1415	57
15	900018	409 (1985 Rev Ed)		$ 725,000	52.4948	45
16	900017	409 (1985 Rev Ed)		$ 5,000	6.69291	6
17	900020	409 (1985 Rev Ed)		$ 1,438,752	68.5373	58

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18	900019	409 (1985 Rev Ed)		$ 297,002	37.2903	32
19	900022	409 (1985 Rev Ed)		$ 148,135	28.698	24
20	900021	409 (1985 Rev Ed)		$ 19,483	12.0054	10
21	900024	409 (1985 Rev Ed)		$ 22,695	12.8188	11
23	900028	409 (2008 Rev Ed)		$ 80,000	22.0244	19
24	900026	409 (2008 Rev Ed)		$ 8,520,000	183.624	156
25	900027	409 (2008 Rev Ed)		$ 878,020	56.5382	48
26	900025	409 (2008 Rev Ed)		$ 90,000	23.1675	20
27	900050	409 (2008 Rev Ed)		$ 2,025,040	78.4056	67
28	900051	409 (2008 Rev Ed)		$ 10,000	9.01441	8

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29	900052	409 (2008 Rev Ed)		$ 6,103,028	144.469	123
30	900046	409 (2008 Rev Ed)		$ 375,000	40.7485	35
31	900047	409 (2008 Rev Ed)		$ 128,000	26.9522	23
32	900048	409 (2008 Rev Ed)		$ 25,000	13.3626	11
33	900049	409 (2008 Rev Ed)		$ 10,000	9.01441	8
34	900042	409 (2008 Rev Ed)		$ 10,000	9.01441	8
35	900043	409 (2008 Rev Ed)		$ 10,000	9.01441	8
36	900044	409 (2008 Rev Ed)		$ 60,000	19.464	17
37	900045	409 (2008 Rev Ed)		$ 10,000	9.01441	8
38	900041	409 (2008 Rev Ed)		$ 40,000	16.3524	14

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39	900040	409 (2008 Rev Ed)		$ 9,000	8.61549	7
40	900039	409 (2008 Rev Ed)		$ 10,000	9.01441	8
41	900038	409 (2008 Rev Ed)		$ 10,000	9.01441	8
42	900037	409 (2008 Rev Ed)		$ 10,000	9.01441	8
43	900036	409 (2008 Rev Ed)		$ 454,585	43.8595	37
44	900035	409 (2008 Rev Ed)		$ 3,384,407	100.427	85
22	900023	409 (1985 Rev Ed)	Manager of TPI's bank account	$ 770,000	53.7326	46
45	900034	409 (2008 Rev Ed)		$ 1,033,000	60.2256	51
46	900033	409 (2008 Rev Ed)		$ 1,238,000	64.6286	55
47	900032	409 (2008 Rev Ed)		$ 5,170,000	129.354	110

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48	900031	409 (2008 Rev Ed)		$ 1,860,000	75.7936	64
49	900030	409 (2008 Rev Ed)		$ 510,000	45.8382	39
50	900029	409 (2008 Rev Ed)	Receiver for the assets of one Prem Ramchand Harjani	$ 680,991	51.2392	44

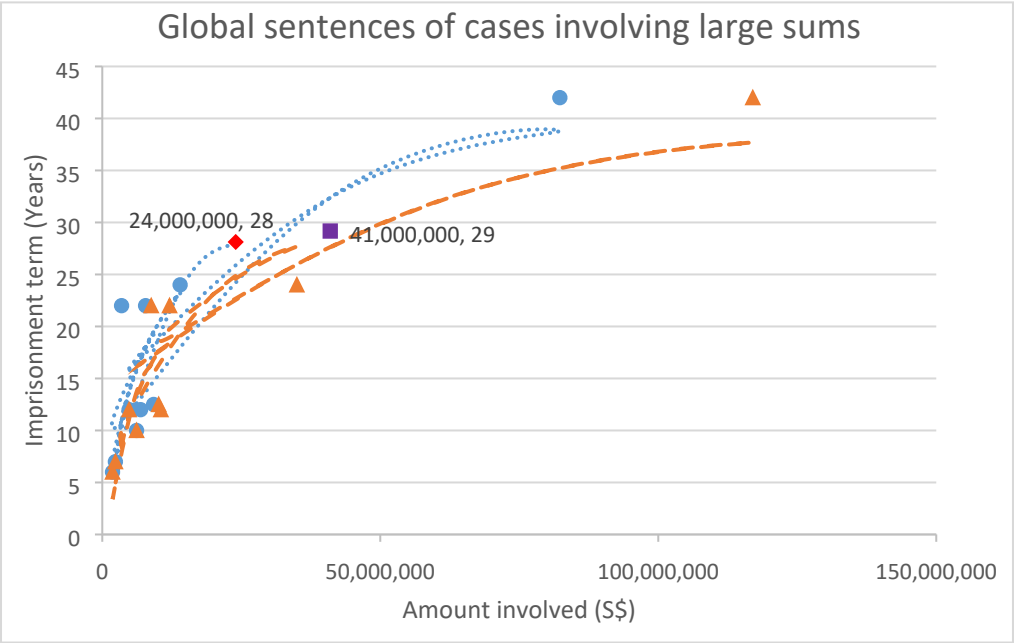
Global sentence

36 Having calibrated the individual sentences, it is necessary to determine which of the above sentences ought to run consecutively, and whether there should be any adjustments to those sentences ordered to run consecutively.

37 In determining the appropriate aggregate sentence, reference is made to the cases at [22] above, which involved offenders who had committed financial crimes involving large sums of money. While such cases are not exclusively s 409 PC cases, plotting those cases on a best fit curve, it is seen that a rough sentence for the present case, which involves a gross amount of about $41 million, and a net amount of about $24 million (considering that about $17 million was recovered or restored),[9] is about 28 to 29 years' imprisonment (**Graph 8**):

[9] Exhibit P124A.

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Graph 8

Legend to Graph 8	
Orange dashed curve and orange triangular markers	Global sentences for cases involving large sums (gross amount)
Blue dotted curve and blue round markers	Global sentences for cases involving large sums (net amount: after deducting sums recovered and restitution)
Purple rectangular marker	Indicative global sentence for gross amount ($41 million) misappropriated in this case
Red diamond marker	Indicative global sentence for net amount ($24 million) misappropriated in this case

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38 Considering the individual sentences alongside the aggravating and mitigating factors discussed above, an aggregate sentence of 28 years appears in keeping with the overall criminality of the accused.

39 However, I take note that the accused, who is presently 65 years old, is of a relatively advanced age in light of the long sentence which he faces. Here, the totality principle mandates that where the sentence is a long term of imprisonment and where the offender is of an advanced age, the court ought not to impose a sentence that effectively amounts to a life sentence, unless the Legislature has prescribed a life sentence to the offence (*Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [78]; see also *Yap Ah Lai* at [91]–[92]). Section 409 of the PC allows the court to impose life imprisonment as the sentence.

40 Nonetheless, given that the accused had also fully cooperated with the authorities and is remorseful for his acts, imposing a life imprisonment term will be excessive in my view. In this regard, I note that the Prosecution, who has submitted for a sentence in the region of 30 years' imprisonment,[10] is also not asking for a life imprisonment term. In the circumstances, to avoid giving a sentence that is tantamount to a life imprisonment term, I order the sentences for the 24th, 47th and 50th charges to run consecutively, with the result that the aggregate sentence is 310 months (25.8 years) imprisonment. The 24th, 47th and 50th charges are selected as they represent the charges with the largest sum in each of the three different capacities in which the accused had misappropriated money from his clients, *viz,* as liquidator, manager and receiver respectively.

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10 Prosecution's Submission on Sentence at para 64.

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Conclusion

41 I do not see the need to make adjustments to these individual sentences ordered to run consecutively. The other sentences are to run concurrently. With remission, the accused may have the chance of being released before his passing. It is hoped that he will use this lifeline wisely, and use whatever time he has remaining (whether in prison or otherwise) to strive to make amends and reflect on the extreme gravity of his wrongdoing and the serious monetary harm he has caused to all the clients who had fully entrusted him with their monies.

Chan Seng Onn
Judge

Hon Yi and Nicholas Khoo (Attorney-General's Chambers) for the Public Prosecutor;
Michael Khoo SC and Low Miew Yin Josephine (Michael Khoo & Partners) for the accused.

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