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

[2025] SGHC 76

Magistrate's Appeal No 9080 of 2024

Between

Public Prosecutor

… *Appellant*

And

Zheng Jia

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Appeal]
[Criminal Procedure and Sentencing — Sentencing — Benchmark sentences]
[Criminal Procedure and Sentencing — Sentencing — Principles]

Public Prosecutor
v
Zheng Jia

[2025] SGHC 76

General Division of the High Court — Magistrate's Appeal No 9080 of 2024
Sundaresh Menon CJ, Tay Yong Kwang JCA, Vincent Hoong J
19 February 2025

24 April 2025

Sundaresh Menon CJ (delivering the grounds of decision of the court):

1 This appeal concerned the sentencing of a director convicted of breaching his duty to act with reasonable diligence under s 157(1) of the Companies Act (Cap 50, 2006 Rev Ed) (the "CA"). The respondent, Mr Zheng Jia (the "Respondent"), operated a business of incorporating companies in Singapore primarily at the behest of foreign clients. As part of the related services offered to his clients, the Respondent would register himself as the locally resident director of those companies and also assisted in opening bank accounts in their names. Beyond that, the Respondent exercised no control or supervision over the companies' affairs whatsoever. Indeed, he was essentially ignorant of such matters.

2 This business model proved so successful that the Respondent eventually found himself unable to manage the volume of work. He therefore enlisted the help of the co-accused person, Mr Er Beng Hwa ("Er"). The

Respondent, through his corporate vehicles, paid Er to act as a locally resident director and assist in opening bank accounts for companies incorporated on behalf of the Respondent's clients. Er, acting on the Respondent's instructions, similarly exercised no authority or supervision over the affairs of those companies whatsoever, and was ignorant of what they did.

3 In 2020, substantial sums – being the proceeds of scams perpetrated abroad – were routed through the bank accounts of two such companies. The Respondent was a director of one company; Er was a director of the other. These events formed the backdrop to the two charges that the Respondent pleaded guilty to in the court below, namely:

(a) one charge under s 157(1) of the CA of failing to exercise reasonable diligence in the discharge of his duties as a director of Ocean Wave Shela Pte Ltd ("Ocean Wave") (the "1st Charge"); and

(b) one charge under s 157(1) of the CA read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code") of abetting – by intentionally aiding – Er's omission to exercise reasonable diligence in the discharge of his duties as a director of Rui Qi Trading Pte Ltd ("Rui Qi") (the "2nd Charge").

For each charge, the Respondent was liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months under s 157(3)(*b*) of the CA read with s 109 of the Penal Code.

4 The learned District Judge (the "DJ") convicted the Respondent of both charges (with a third having been taken into consideration) and imposed fines of $3,500 and $5,000 for the 1st and 2nd Charges respectively. The Respondent

was also disqualified from acting as a director or partaking in the management of any company for a period of five years pursuant to s 154 of the CA.

5 Dissatisfied with the DJ's decision not to impose a custodial sentence, the Prosecution appealed. At the close of the hearing on 19 February 2025, we allowed the appeal and substituted the fines with sentences of three months' imprisonment for the 1st Charge and seven months' imprisonment for the 2nd Charge, which were to run consecutively for an aggregate sentence of ten months' imprisonment. We now provide the detailed reasons for our decision.

Background

6 We begin with an overview of the agreed facts. The Respondent was a chartered accountant who offered accounting and corporate secretarial services through three of his companies, namely (a) Atoms Global Pte Ltd ("Atoms Global"); (b) Zhuoxin Global (Singapore) Pte Ltd; and (c) Panasia Secretarial Services Pte Ltd ("Panasia").

7 In November 2019, the Respondent established a branch office of Panasia in Shenzhen, the People's Republic of China ("PRC"), with a view to attracting Chinese clients who were interested in incorporating companies in Singapore. Companies incorporated on behalf of those clients would share a business address with Atoms Global, with the Respondent registering himself as director and company secretary of those companies. The clients themselves would also be registered as directors and shareholders, though they would typically not be resident in Singapore. It appears that these services were priced at somewhere between $1,000 to $1,400 annually. Investigations later revealed that the Respondent had incorporated and/or been registered as a director of 384 companies in this way.

Facts relating to the 1st Charge

8 Sometime in May 2020, one Zhong Haibo ("Zhong") was referred by Panasia's staff to the Respondent as a prospective client. On 26 May 2020, the Respondent proceeded to incorporate Ocean Wave at Zhong's request. The Respondent and Zhong were listed as Ocean Wave's directors, with Zhong being the company's sole shareholder. With the Respondent's assistance, Ocean Wave opened a bank account in Singapore with United Overseas Bank Limited (the "Ocean Wave UOB Account").

9 On 28 October 2020, an American company, Source Substrates LLC ("Source"), fell victim to a scam and was deceived into transferring US$64,630 to the Ocean Wave UOB Account. The moneys were then channelled to a bank account in the PRC on 29 October 2020. It was not disputed that those moneys, having been the proceeds of cheating committed against Source outside of Singapore, constituted "stolen property" within the definition of s 410 of the Penal Code.

10 The Respondent admitted in the statement of facts (the "SOF") that was adduced in the court below that:

> When [the Respondent] registered himself as director for Ocean Wave, he never met Zhong and did not know what Zhong's role in Ocean Wave was. He also did not know anything about Ocean Wave's business activity, its suppliers or clients, or if Ocean Wave had any business activity in Singapore. [The Respondent] did not take any steps to find out anything about Ocean Wave, including checking whether there were transactions made through its bank accounts, reviewing the bank statements, or enquiring about what the bank account was to be used for. [The Respondent] only intended to get information from Zhong regarding Ocean Wave at the end of the financial year (i.e. close to a year from incorporation) to be able to file the annual returns. In doing so, [the Respondent] had failed to exercise any supervision over the affairs of Ocean Wave generally, and the transactions in Ocean Wave's UOB Account specifically.

11 These admissions formed the basis for the 1st Charge against the Respondent, and the allegation that he had failed to exercise reasonable diligence in the discharge of his duties as a director of Ocean Wave (in particular, by having failed to exercise *any* supervision over Ocean Wave's affairs or the transactions in the Ocean Wave UOB Account).

Facts relating to the 2nd Charge

12 As mentioned earlier, the Respondent's efforts at expanding his client base in the PRC proved to be a success and he eventually found himself unable to handle the volume of work. He therefore recruited Er sometime between April to June 2020 under a "nominee services" arrangement, which involved Er acting as a locally resident director for companies incorporated by Atoms Global on behalf of the Respondent's clients.

13 Er was initially paid $50 per year for each company he stood as nominee director for, and an additional $50 where Er's assistance was needed for administrative tasks (which included opening bank accounts and signing documents). By October 2020, the "nominee services" arrangement had been revised so that Er drew a monthly salary of $1,400 as an employee of Atoms Global. Investigations later revealed that Er had been appointed as a director of 186 companies in total.

14 Pursuant to this arrangement, Er was registered as a director and secretary of Rui Qi, which was incorporated in Singapore on 3 August 2020. One Hou Xiaohui ("Hou") was registered as foreign director of Rui Qi. Rui Qi later opened two bank accounts with United Overseas Bank Limited, one denominated in US dollars and the other in Singapore dollars (collectively, the "Rui Qi UOB Accounts"). Hou was the sole authorised signatory of those bank accounts.

15 As with the Ocean Wave UOB Account, the Rui Qi UOB Accounts were eventually used to receive and transmit the proceeds of scams perpetrated against three foreign companies (namely, Texas Capital Bank; Gasfin Development GmbH; and Abu Dhabi Ports). It was likewise undisputed that those proceeds – which amounted to US$2,183,936 and S$237,120 – constituted "stolen property" within the definition of s 410 of the Penal Code.

16 Arising from his role in these events, Er pleaded guilty to one charge under s 157 of the CA and was fined $4,000. He was also disqualified from acting as a director or taking part in management activities pursuant to s 154 of the CA.

17 So far as the terms of Er's engagement under the "nominee services" arrangement were concerned, the Respondent admitted in the SOF that:

> 21. When Er called [the Respondent], [the Respondent] told him about a "nominee services" arrangement which involved Er acting as local director for companies incorporated by Atoms Global for [the Respondent's] clients. Er asked [the Respondent] what the responsibilities of a local director were and what was required of him as a local director. [The Respondent] told him that Atoms Global would conduct the necessary checks on the clients and they would handle the requisite paperwork as well as the checking of accounts for the companies so incorporated. [The Respondent] informed Er that he would also need to assist in the opening of bank accounts for the companies he stood as local director for. [The Respondent] told Er that he need not do anything other than sign on the company registration documents and bank account opening documents. [The Respondent] told Er he need not manage or run the company and need not check all the banking transactions of the company. Er understood from [the Respondent] that he was to be a director of these companies in name only and was not to have any responsibility over the running of these companies or be required to do anything.
>
> …
>
> 23. While Er did not know what work Atoms Global or [the Respondent] did, he did not ask further questions and agreed to the arrangement as he wanted the money. [The Respondent]

> further told Er that he would "manage his risk" in being a director of these companies incorporated by Atoms Global using an engagement letter with the client requesting for the "nominee services" …

18 In relation to Er's involvement with Rui Qi specifically, the Respondent further admitted that:

> When Er was registered as director for Rui Qi, [the Respondent] did not inform Er about the results of their background checks on the client Hou. [The Respondent] and Er never met Hou and did not know what Hou's role in Rui Qi was. [The Respondent], and consequently Er, also did not know anything about Rui Qi's business activity, its registered address, its suppliers or clients, or if Rui Qi had any business activity in Singapore. Neither [the Respondent] nor Er did take any steps to find out anything about Rui Qi, including checking whether there were transactions made through its bank accounts, reviewing the bank statements, or enquiring about what the bank accounts were to be used for. [The Respondent] did not provide Er with any further information in relation to Rui Qi following its incorporation, including the bank statements or tell him about the information therein. As a result, Er had failed to exercise any supervision over the affairs of Rui Qi generally, and the transactions in [the Rui Qi UOB Accounts] specifically.

19 These admissions formed the basis for the 2nd Charge against the Respondent for abetting (by intentionally aiding) Er's omission to exercise reasonable diligence in the discharge of his duties as a director of Rui Qi.

Facts relating to the TIC Charge

20 The Respondent consented to a third charge (the "TIC Charge") being taken into consideration for the purposes of sentencing. The TIC Charge was essentially identical to the 2nd Charge, save that it involved Er's directorship of another company, Eastar Holding Pte Ltd ("Eastar"). The Respondent appointed Er as a director of Eastar on 20 August 2020 and in keeping with the assurances given by the Respondent, Er exercised no supervision whatsoever over the

activities of Eastar or its bank accounts. Those bank accounts too were eventually used to receive and transmit stolen moneys.

The decision below

21 The DJ's grounds of decision were set out in *Public Prosecutor v Zheng Jia* [2024] SGDC 118 (the "GD"). As a starting point, the DJ considered – and the parties were agreed – that the applicable sentencing framework was laid down in *Abdul Ghani bin Tahir v Public Prosecutor* [2017] 4 SLR 1153 ("*Abdul Ghani*").

22 We shall say more about *Abdul Ghani* shortly. Here, we just note that Chan Seng Onn J (as he then was) held in that case that the starting point for "purely negligent breaches" of the duty to exercise reasonable diligence under s 157 of the CA was a fine – at least, where there were no weighty aggravating factors – with custodial sentences being reserved for instances where the director had breached that duty "intentionally, knowingly or recklessly" (at [166]). On that footing, the learned judge went on to prescribe (at [169]) notional maximum sentences of:

(a) 12 months' imprisonment for dishonesty or intentional/knowing disregard of the director's duty to exercise reasonable diligence in the discharge of the duties of his office;

(b) six months' imprisonment for a reckless failure to exercise reasonable diligence; and

(c) three months' imprisonment for a negligent failure to exercise reasonable diligence.

23 Applying *Abdul Ghani* to the facts before her, the DJ was satisfied that the Respondent had only been negligent (so that the custodial threshold had not been crossed). As regards the 2nd Charge, the DJ relied on the principle of parity and considered the non-custodial sentence imposed on Er for his role in relation to the 2nd Charge (see [16] above). On that footing, the DJ imposed an aggregate fine of $8,500 (in default 43 days' imprisonment) and a disqualification order pursuant to s 154 of the CA on the Respondent.

Parties' submissions on the appropriate sentencing framework

24 In pressing for a custodial sentence, the Prosecution invited us to develop – if not depart from – the approach to sentencing that was taken in *Abdul Ghani*. We therefore appointed Mr Kwong Kam Yin ("Mr Kwong") as Young Independent Counsel ("YIC") to address us on the appropriate sentencing approach or framework that should be applied for offences under s 157(1) of the CA, where a locally resident nominee director had failed to exercise reasonable diligence in the discharge of the duties of his or her office. In particular, we invited Mr Kwong to consider:

(a) whether the sentencing approach in *Abdul Ghani* was appropriate for such an offence;

(b) when the custodial threshold would be crossed for such an offence; and

(c) whether the same sentencing framework could apply in cases where the offender was liable under s 109 of the PC for *abetting* the commission of such an offence (and if not, what the sentencing approach should be in such cases).

The YIC's proposed framework

25 In answer to the first question, Mr Kwong submitted that the *Abdul Ghani* approach was inappropriate because it placed inordinate emphasis on the offender's culpability without sufficiently taking account of the harm caused by the offence. On that basis, Mr Kwong proposed a "two-stage, five-step" sentencing framework modelled on the framework that was developed and laid down in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev*").

26 In summary, the first stage of Mr Kwong's proposed framework was directed at determining an indicative starting sentence for the offence in question. This proceeded in three steps, the first of which was to identify the salient offence-specific factors going towards (a) the level of harm caused by the offence; and (b) the offender's culpability. We reproduce below a tabular summary of the relevant factors proposed by Mr Kwong:

Offence-specific factors	
Factors going towards harm	**Factors going towards culpability**
(i) The extent of injury (financial loss or non-financial injury) caused to the company	(i) The degree of negligence, recklessness or intention / knowledge in failure to exercise reasonable diligence
(ii) The extent of injury (financial loss or non-financial injury) caused to third parties	(ii) The duration of offending
(iii) The involvement of a syndicate	(iii) The prospect of a large reward

(iv) The involvement of a transnational element (v) The harm done to delivery of financial services and/or the integrity of the economic infrastructure	(iv) Whether the offender took steps to make it easier to evade detection by the authorities

27 At the second step, the court would identify the indicative sentencing range applicable to the offence. In this connection, Mr Kwong proposed the following sentencing bands which took the level of harm caused and the offender's culpability as their axes:

Harm / **Culpability**	**Slight**	**Moderate**	**Severe**
Low	Low fine	High fine	Up to 4 months' imprisonment
Medium	High fine	Up to 4 months' imprisonment	4–8 months' imprisonment
High	Up to 4 months' imprisonment	4–8 months' imprisonment	8–12 months' imprisonment

28 Based on these sentencing bands, it followed that the custodial threshold would only be crossed where (a) severe harm resulted from the offence, irrespective of the offender's culpability; (b) there was a high level of culpability on the offender's part, irrespective of the harm caused; or (c) where there was at least moderate harm accompanied by medium culpability on the offender's part.

29 At the third step, the court would have to situate the particular offence within the applicable sentencing band to arrive at an indicative starting sentence.

30 The second stage or fourth step of Mr Kwong's proposed framework was broadly concerned with calibrating the indicative starting sentence to arrive at a final sentence. This step therefore called for adjustments based on offender-specific factors (both aggravating and mitigating) that were present in the case. At the fifth and final step, the court would have to consider the sentence as a whole and make any further adjustments necessary to cohere with the totality principle.

The Prosecution and Respondent's submissions

31 The Prosecution agreed with Mr Kwong's submission that the *Abdul Ghani* framework was inappropriate because it placed excessive weight on the offender's culpability to the exclusion of the harm resulting from the offence. Although submitting that a holistic assessment of the offender's culpability should be preferred – as opposed to an inquiry into whether the breach of duty was intentional, knowing, reckless or negligent – the Prosecution broadly aligned itself with Mr Kwong's proposed framework.

32 The Respondent, for his part, contended for the retention of the *Abdul Ghani* approach. It was submitted on his behalf that Mr Kwong's proposed framework should be rejected, essentially on grounds that the offending director in such a case cannot have foreseen the harm that might be caused by his failure to act with reasonable diligence (at least insofar as that failure was a result of negligence or recklessness on the director's part). To that extent, it would be unfair for the sentence to be enhanced on account of harm that was beyond the director's foreseeability and control.

Our decision on the appropriate sentencing approach

33 Having considered the parties' submissions, we agreed that there were some difficulties with the *Abdul Ghani* approach. At the same time, it was clear to us that Mr Kwong's alternative was not without its difficulties: in ascribing equal weight to the harm caused by the offence and the level of the offender's culpability, Mr Kwong's methodology was apt to produce uneven and somewhat arbitrary sentencing outcomes. In our judgment, the proper approach was to consider *all* offence-specific factors holistically in fixing an indicative starting sentence for the offence, before further calibrating that sentence on account of relevant offender-specific factors and the totality principle. We elaborate on these points in turn.

Difficulties with the Abdul Ghani approach

34 Like the Respondent, the appellant in *Abdul Ghani* was a chartered accountant who was in the business of providing corporate secretarial services. As part of those services, the appellant incorporated companies on behalf of his clients and acted as the resident director where his co-directors were not ordinarily resident in Singapore.

35 In 2011, the appellant incorporated four companies on the instructions of a Romanian contact, one of which was World Eastern International Pte Ltd ("WEL"). The appellant and one Marius Antonio-Costel Sima ("Sima") were registered as WEL's directors, with Sima being WEL's sole shareholder. The appellant then proceeded to open a bank account for WEL with United Overseas Bank Limited (the "WEL Account"). Sima was given full control over that bank account.

36 Between 30 March 2021 and 31 May 2021, a number of transactions took place pursuant to which stolen moneys were received by and transferred out of the WEL Account. On the basis that the transfer of these moneys was attributable to his neglect as an officer of WEL, the appellant was charged with six counts under s 47(1)(*b*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) (the "CDSA"). The appellant also faced one charge of having failed to exercise reasonable diligence in the discharge of his duties as a director of WEL under s 157(1) of the CA. Following a trial in the District Court, the appellant was convicted of all seven charges and sentenced to an aggregate imprisonment term of 26 months and four weeks. He was also disqualified from acting as a director pursuant to s 154 of the CA.

37 We should point out that the charge under s 157(1) of the CA was, at best, a relatively minor part of the overall criminality alleged against the appellant in that case. Several observations were made by Chan J on sentencing under s 157(1) of the CA, but *Abdul Ghani* was ultimately not a case like the present where our attention was solely directed to that question of sentencing.

38 This is significant because, where the focus of the sentencing court is on a particular offence (in the case of *Abdul Ghani*, on offences under s 47(1)(*b*) of the CDSA), that may diminish the weight of its observations in respect of other offences. As the Court of Appeal noted in *Public Prosecutor v BAB* [2017] 1 SLR 292 (at [61]), it is vital to be "mindful of the facts when [one looks] at how the court has articulated the benchmark and how the court has in fact applied it in the factual situation in any particular case". The Court then went on to observe (at [61]) that:

> … in cases involving multiple charges, when the court finally deliberates on what the overall sentence ought to be, it

> frequently makes adjustments to the sentences for individual charges in order to arrive at an aggregate that it thinks is proportionate to the culpability of the offender and which is just in all the circumstances.

39 All of this is to say that sentencing judges must remain sensitive to the myriad considerations accounted for in a sentencing precedent (including the charges not proceeded with but taken into consideration for sentencing, or the application of the one-transaction rule) and how that might affect the relevance or applicability of that precedent to the case at hand. This is especially true in the present context, given the connections that Chan J drew in *Abdul Ghani* between the s 47(1)(*b*) CDSA offences and the s 157(1) CA offence (see, for instance, *Abdul Ghani* at [157], [171]–[172] and [173]).

40 In any case, as regards the offence under s 157(1) of the CA, we have summarised the learned judge's decision on the applicable sentencing framework at [22] above. In formulating his views, the learned judge opined that there were "twin rationales" underpinning s 157(1) of the CA, namely the need to (a) protect the public by deterring directorial misconduct; and (b) preserve a vibrant commercial environment by "not over-deterring the commercial market" (at [153] and [155]). With these rationales in mind, the learned judge advanced three reasons in support of his view that the custodial threshold would only be crossed where the duty to exercise reasonable diligence under s 157(1) of the CA had been breached "intentionally, knowingly or recklessly".

41 First, the learned judge considered that a non-custodial sentence was the appropriate starting point for purely negligent conduct because "there [was] an intuitive sense that an offender [was] less morally culpable when the offence [had been] committed merely negligently as opposed to recklessly, knowingly or intentionally". In this connection, the learned judge referred to several cases

which, in his view, lent credence to the bright line between negligence on the one hand, and rashness or recklessness on the other, for the purposes of sentencing (at [114]–[121] and [157]).

42 Second, the learned judge took the view that deterrence – though undoubtedly relevant – was a less weighty sentencing consideration where purely negligent breaches were concerned, especially "in view of the second rationale of not hampering commerce through overcriminalisation" (at [158]–[161]).

43 Third, the learned judge observed that the courts had at their disposal sanctions other than imprisonment, such as disqualification orders and civil liability, which sufficed in deterring purely negligent breaches of the duty to exercise reasonable diligence (at [162]–[165]).

44 In considering the learned judge's approach in *Abdul Ghani*, we begin by observing that the duty to exercise reasonable diligence under s 157(1) of the CA is a broad one that is capable of being breached in any number of ways. One cannot, therefore, realistically formulate an omnibus sentencing framework that caters to every breach of the duty. In our judgment, the sentencing framework must respond to the particular facts and nature of the offence in question. It may well be the case that in certain circumstances, a director who commits an isolated negligent breach of his duties as a director should not be punished with a term of imprisonment.

45 With respect however, this has nothing whatsoever to do with a case such as the present, where the offender is a professional chartered accountant whose business model was predicated on him being registered as a locally resident nominee director of numerous companies incorporated for foreign

clients, but who would then exercise no control or supervision over the affairs of those companies whatsoever. There is simply no equivalence at all between such a director, and another who is involved in the affairs of a company or a group, but who makes a negligent error in the discharge of his duties. In a context such as this, it is wholly misplaced to even consider the second rationale of not hampering commerce through "overcriminalisation". Indeed, it was the concerted dereliction of his core duty under s 157(1) of the CA that enabled the Respondent's high volume, low effort enterprise and fuelled its growth. And the Respondent proceeded in this way despite his admission that he was "familiar with the duties of a director of a Singapore incorporated company, including the need to exercise reasonable diligence in the discharge of his duties as a director". He also admitted to having been "aware that this responsibility also included ensuring that the company was not involved in illegal activities".

46 In circumstances like these, leaving aside the erroneous assumption that there are twin rationales that inform sentencing in this context, it is also wrong to conclude that this is a case of mere neglect. On the contrary, given his business model, the Respondent had every intention to neglect – and did in fact neglect – or abdicate his duty to exercise reasonable diligence from the outset, notwithstanding his knowledge of the risk that the company's facilities could be abused by other bad actors. This, indeed, is what made his service attractive to clients such as those whose criminal activities were enabled by the Respondent's services reflected in the present charges.

47 We disagree with the learned judge's view in *Abdul Ghani* that the preservation of Singapore's commercial environment should militate against the imposition of custodial sentences, save where the offending director had acted "intentionally, knowingly or recklessly". This is much too broad a statement and it overlooks the gross differences between one who offers a particular form

of directorship that entails looking away from the affairs of the company, and one who is committed to the best interests of the company but makes a mistake in the course of carrying out his duties. Directors who assume their offices with every intention of abdicating their duty under s 157(1) of the CA present serious risks to their companies specifically and Singapore's corporate and financial ecosystem generally and they are acting knowingly, if not intentionally. For these reasons, we do not think *Abdul Ghani* should be relied on as a sentencing precedent, at least in relation to offences under s 157(1) of the CA, which is all we are concerned with here.

Difficulties with the YIC's proposed framework

48 Turning to Mr Kwong's proposed framework, the principal difficulty with it (as we alluded to at [33] above) lies in the fact that it *overemphasises* the consideration of the harm caused by the offence and would give this single factor, over which the offender would typically have no control, an excessive and distorting effect on sentencing outcomes. In our judgment, offences of the sort with which this appeal is concerned involve a single, uniform type of harm, namely, the provision of a corporate structure that is ripe and ready for abuse by others. This is distinct from any secondary harm to third parties that may materialise if and when the corporate structure is so abused. The nature and extent of the secondary harm would, save in exceptional circumstances, be matters entirely beyond the director's control. Mr Kwong's proposed framework, by placing equal emphasis on the amounts that are illicitly transacted in these circumstances, would introduce a significant element of fortuity to the sentencing exercise and we considered this to be unsatisfactory.

49 We would compare this with the circumstances prevailing in *Logachev*, which was a case concerned with offences of cheating at play under s 172A(2)

of the Casino Control Act (Cap 33A, 2007 Rev Ed). The principal form of harm resulting from such offences would be the loss of the amounts that the casinos were cheated of. There was no question of the relevant harm in *Logachev* having been a matter entirely within the appellant's control. To that extent, there was nothing objectionable in according equal weight to both the harm caused and the offender's culpability for the purposes of sentencing.

The Revised Framework

Step 1: Identifying the relevant offence-specific factors

50 We turn to explain what we considered to be the proper sentencing approach (the "Revised Framework"). It will be noted that in some respects, it is somewhat similar to the approach taken in *Abdul Ghani*, though there are material differences including that the relevant factual context is confined to this type of case involving professional directors whose business models were premised on providing no or inadequate oversight over the affairs of the companies as described at [45]–[47] above, and that we pay closer attention to the real nature of the offender's culpability.

51 In our judgment, the exercise should proceed in three steps, the first of which is to identify *all* the relevant offence-specific factors (and this would include the nature and extent of the harm caused). We set out below a non-exhaustive list of factors that the court may consider in relation to offences of the kind with which this appeal was concerned:

(a) the extent of due diligence undertaken by the director in relation to the activities of the company and/or the client;

(b) efforts made by the director to monitor or review transactions in the company's bank account(s);

(c) the extent to the which the director knew – or should have known – that failing to exercise reasonable diligence in overseeing the affairs of the company could (or even *would*) enable abuse of the corporate structure by others;

(d) the duration of offending (and in particular, whether the offending conduct was a one-off breach or part of a wider pattern);

(e) whether the offending conduct was pursued as part of a business or other profit-driven scheme (and if so, the extent of the profits derived from or attributable to the offending conduct);

(f) whether the director made any efforts at concealing his wrongdoing;

(g) whether there was a transnational element to the offence (such as the involvement of cross-border criminal syndicates); and

(h) the nature and extent of the harm that resulted to the company and/or third parties.

52 We stress that these factors are not intended to be exhaustive and they have been identified having regard to the facts arising in this appeal. As we stated at [44] above, breaches of the duty under s 157(1) of the CA may come in various forms and it is imperative that the sentencing judge remain sensitive to the particular facts of each case in identifying the relevant offence-specific factors.

Step 2: Situating the offence within the appropriate sentencing band

53 Having identified the salient offence-specific factors, the next step is to place the offence within the appropriate sentencing band to arrive at an indicative sentence. The table below sets out what we considered to be the appropriate sentencing bands for offences of the kind that arose in this appeal:

	Number of Offence-Specific Factors	**Indicative Starting Sentence**
Band 1	1–3	Up to four months' imprisonment
Band 2	4–5	Five to eight months' imprisonment
Band 3	> 6	Nine to twelve months' imprisonment

54 In our judgment, the custodial threshold will be presumptively crossed for offences of the present category for the reasons set out at [44]–[47] above and the onus will be on the director to explain why that should not operate in his or her case.

55 We would further stress that the second step should not be approached purely as an exercise in counting the number of offence-specific factors present in the case. The table above should only be treated as setting out *guidelines*; the court must in every case consider the gravity of the salient factors to determine if the offence would be more properly situated in a higher or lower band (as well as where the offence falls *within* the applicable band).

Step 3: Calibrating the indicative sentence for offender-specific factors

56 After deriving an indicative sentence at the second step, the third and final step would be to adjust that indicative sentence based on *offender*-specific factors relevant to the case. The factors falling within this category are generally uniform across all criminal offences and they have been addressed elsewhere: see, for instance, *Logachev* at [63]–[70]. We do not therefore propose to explore them in any detail here, save to say that they would include matters such as:

(a) other offences taken in consideration for the purposes of sentencing;

(b) the offender's relevant antecedents;

(c) remorse (or the lack thereof) on the offender's part;

(d) whether the offender entered into a timeous plea of guilt;

(e) the extent of voluntary restitution made by the offender; and

(f) whether the offender voluntarily cooperated with the authorities in the course of investigations into the offence.

Application of the Revised Framework to offences of abetment

57 The Revised Framework is, in our view, equally applicable to the sentencing of accessories to a breach of s 157(1) of the CA. The key difference lies in the type of offence-specific factors that may be accounted for at the first step. For instance, efforts taken by an abettor to understand and monitor the activities of the company may not be as relevant to the inquiry. Instead, the focus will shift to factors such as the abettor's reasons for having aided or instigated the director's breach of duty; any disparity in knowledge or expertise between the abettor and the director (particularly in relation to the duties of the

latter's office); and whether the abettor's acts were motivated by profit. These are but some factors that the court may have regard to and ultimately, a commonsensical approach should be taken in every case to identifying the pertinent offence-specific factors.

Our decision on the appeal against sentence

58 We now turn to the application of the Revised Framework to the Respondent's offences. In respect of the 1st Charge, we considered the offence to have fallen within the Band 2 of the Revised Framework.

(a) The Respondent was a chartered accountant and plainly did contemplate that Ocean Wave and its bank accounts could be used for illegal purposes. He also admitted to having been familiar with the duties of his office as a director of Ocean Wave.

(b) This notwithstanding, the Respondent took virtually no steps to glean an understanding of Zhong's background or the company's proposed business activities prior to the incorporation of Ocean Wave. Following the incorporation of Ocean Wave and the opening of the Ocean Wave UOB Account, the Respondent likewise made no effort to monitor the company's affairs generally or transactions made on the Ocean Wave UOB Account specifically (see [10] above).

(c) As we observed at [45] above, the Respondent's consistent dereliction of duty in relation to Ocean Wave was but one instance of his broader method of operation in providing corporate secretarial services through Atoms Global and Panasia. By the Respondent's admission, this would have extended to the 384 companies of which he was registered as a nominee director. In each case, the Respondent was

engaged on terms which "limited [his duties] to the signing of statutory forms and board resolutions" and subject to the proviso that he "shall not be required to participate, in any manner whatsoever, in the management or decision-making of the [company]". We were therefore fortified in the view that the Respondent *knew* he was making available companies that could – and likely would – be used for illicit purposes by persons outside of Singapore. In essence, the Respondent's business model was designed as a scheme that offered his clients a means to evade our corporate regulations, such as the need for a locally resident director, which are aimed at preventing abuses.

(d) There could also be no doubt that the Respondent conducted himself in this manner because of the recurring profits he stood to make (see [7] above).

(e) Finally, the harm that had been enabled by the offence – although not as severe as that arising out of the second offence – was also not insubstantial.

59 In our judgment, these features of the offence placed it comfortably in Band 2 of the Revised Framework and we arrived at an indicative sentence of five months' imprisonment.

60 Turning to the 2nd Charge, we considered the offence to have fallen within Band 3 of the Revised Framework. The most striking feature of this offence was the fact that the Respondent had recruited Er – who was unemployed at the time and was wholly unfamiliar with the duties of a locally resident director – for the sole purpose of meeting the sharply expanded demand for the Respondent's services. Simply put, the Respondent gave Er unequivocal instructions to adopt a hands-off approach as a nominee director of Rui Qi. This

profit-driven exploitation of Er's ignorance was, additionally, reflected in the very low remuneration he paid Er in relation to what he was paid by his customers, and in our judgment, this was a factor that significantly aggravated the Respondent's culpability. We were also mindful that the harm caused by this second offence, which concerned proceeds of over US$2m stolen from three victims, was considerably greater than that of the first, which involved US$64,630. On that footing, it was clear to us that the offence was most properly situated within the apex band of the Revised Framework and warranted an indicative sentence of at least ten months' imprisonment.

61 Moving then to the third step of the Revised Framework, we were mindful that the Respondent pleaded guilty to the charges and that some credit could be accorded to him on that account. Weighing this against the TIC Charge, and having regard also to the need for some moderation given that we also considered it appropriate to impose consecutive sentences, we concluded that the condign sentences would be (a) three months' imprisonment for the 1st Charge; and (b) seven months' imprisonment for the 2nd Charge.

62 Finally, we disagreed with the DJ's view that the sentence for the 2nd Charge ought to be attenuated in the interest of parity between the punishments imposed on him and Er (see [23] above). Er's case was not before us and it was clear, in any event, that there was far greater culpability on the Respondent's part in relation to the events giving rise to the 2nd Charge. There was hence no parity or equivalence to speak of between the Respondent and Er that would warrant a downward calibration of the former's sentence.

Conclusion

63 We therefore allowed the Prosecution's appeal and substituted the fine imposed by the DJ with an aggregate custodial sentence of ten months'

imprisonment. For the avoidance of doubt, we do not disturb the order of disqualification imposed by the DJ pursuant to s 154 of the CA.

Coda on the application of prospective overruling in this appeal

64 After this appeal was heard and our decision was rendered, the Respondent filed HC/CM 17/2025 ("CM 17") seeking a deferment on the commencement of his imprisonment term and a consequential extension of the bail that had been granted to him. The basis for this motion, according to the Respondent, was his intention to apply for a criminal review of our decision in his appeal (the "CR Application"), the proposed argument in this last-mentioned application being that the doctrine of prospective overruling ought to have been applied in his favour.

65 We dismissed CM 17 on 11 April 2025 without having convened an oral hearing of the matter. Here, we take the opportunity to briefly explain our decision.

66 As a starting point, it was common ground between the parties that whether CM 17 should be allowed would turn principally on the Respondent's prospects of succeeding in the CR Application. Anterior to this was the question of whether the Respondent would be granted permission to pursue the application, in accordance with s 394H(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC").

67 Section 394H(6A) lists the matters that the court must consider in deciding whether to grant said permission; this includes, among other things (a) whether the review application to be made has a "reasonable prospect of success"; and (b) whether the conditions or requirements in s 394J of the CPC are satisfied.

68 The principal condition set out in s 394J of the CPC is the court's satisfaction that there is "sufficient material" (being evidence or legal arguments) on which the court may conclude that there has been a "miscarriage of justice" in the prior criminal proceedings. The concepts of "sufficiency" and "miscarriage of justice" are then respectively elaborated on in ss 394J(3)–394J(4) and ss 394J(5)–394J(7).

69 Among the matters relevant to this motion was s 394J(3)(*b*) of the CPC, which reads:

> For the purposes of [s 394J(2)], in order for any material to be "sufficient", that material must satisfy all of the following requirements:
>
> …
>
> (*b*) even with reasonable diligence, the material could not have been adduced in court earlier;

70 Before the appeal was heard, one of the key issues that had been specifically flagged to the parties – and on which submissions from the YIC were invited – was whether it would be appropriate to depart from the sentencing framework laid down in *Abdul Ghani*. In these circumstances, there was no doubt at all that the possibility of departing from *Abdul Ghani* had been fully appreciated by the parties. Any issue as to prospective overruling ought therefore to have been raised at the hearing of the appeal but was not. It would, therefore, have been wrong in principle for the Respondent to then rely on this omission as a basis for invoking the Court's power of review.

71 In fact, it was conceded in the Respondent's written submissions in CM 17 that the real reason prospective overruling had not been raised was that his counsel had thought that there would be no merit to doing so. It would thus have been all the more impermissible for the Respondent to walk back on that

considered decision by means of a criminal review: see *Beh Chew Boo v Public Prosecutor* [2021] 2 SLR 180 at [104]; *Kong Swee Eng v Public Prosecutor* [2022] 5 SLR 310 at [15]–[19].

72 We turn next to the requirement that the material be indicative of a "miscarriage of justice" having tainted the sentencing decision sought to be reviewed. The statutory guidelines relevant in this connection may be summarised as follows:

(a) The applicant's material will only be regarded as "sufficient" if it is, among other things, "compelling, in that the material is *reliable*, *substantial*, *powerfully probative*, and *capable of showing almost conclusively* that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made" [emphasis added]: s 394J(3)(*c*) of the CPC.

(b) The appellate court may conclude that there has been a "miscarriage of justice" only if "the earlier decision (being a decision on conviction or sentence) is *demonstrably wrong*" [emphasis added]: s 394J(5)(*a*) of the CPC.

(c) In order for an earlier decision on sentence to have been "demonstrably wrong", the applicant must show that "the decision was based on a *fundamental misapprehension of the law or the facts*, thereby resulting in a decision that is *blatantly wrong on the face of the record*" [emphasis added]: s 394J(7) of the CPC.

73 It will be immediately evident that these are high bars to cross. These guidelines should also be read alongside the requirement under s 394H(6A) of the CPC that the proposed application bear a "reasonable prospect of success"

(see [67] above). If a review application is bound to fail because the relevant material plainly fails to meet the thresholds we have just set out, then permission to pursue that application will not be granted.

74 In the present context, the onus was on the Respondent to show that the non-application of prospective overruling was not only wrong, but in fact constituted a "miscarriage of justice". For the reasons that follow, it was clear to us that the Respondent could not discharge this burden.

75 Firstly, it was clarified in *Adri Anton Kalangie v Public Prosecutor* [2018] 2 SLR 557 that "judicial pronouncements are by default retroactive in nature" and "it is only in an exceptional case that the court may exercise its *discretion* to invoke the doctrine of prospective overruling" [emphasis in original] (at [39] and [43]). The Court of Appeal then went on to hold that "the onus of establishing that there are grounds to limit the retroactive effect of a decision should ordinarily be on whoever seeks to do so" (at [44]). So far as the Respondent's appeal was concerned, he failed to discharge this burden because his counsel had made a considered decision not to raise the doctrine of prospective overruling (see [70]–[71] above). We leave open the question of whether, assuming this resulted from a mistaken view on the part of counsel, it would nonetheless finally preclude offenders from raising new arguments in proceedings for review; even so, the omission must ordinarily be regarded as a factor that weighs against any finding of a miscarriage of justice. In any case, we do not think in this case it was a mistaken view at all.

76 Simply put, we were not persuaded that the circumstances of the Respondent's appeal would objectively have warranted an application of prospective overruling. In *Public Prosecutor v Hue An Li* [2014] 4 SLR 661 ("*Hue An Li*"), this Court held that the application of the doctrine should be

guided by four factors, namely (a) the extent to which the law or legal principle concerned is entrenched; (b) the extent of the change to the law; (c) the extent to which the change to the law was foreseeable; and (d) the extent of reliance on the law or legal principle concerned (at [124]).

77 In this case, the aspect of *Abdul Ghani* that we were concerned with was the sentencing approach taken there and in particular, the suggestion by Chan J that the custodial threshold would only be crossed where the director had breached his duty of reasonable diligence "intentionally, knowingly or recklessly" and not negligently. The path taken by the learned judge in reaching that conclusion, however, was significant:

(a) As we have stressed at [37] above, *Abdul Ghani* was a case concerned primarily with charges under the CDSA in relation to the transfer of stolen moneys. There was only one related charge under s 157(1) of the CA.

(b) It was in that context that Chan J explored "neglect" as an ingredient of s 59(1)(*b*) of the CDSA (*Abdul Ghani* at [51]–[63]). In particular, he considered the appropriate punishment for a director who had only been negligent (at [96]–[122]); on this point, Chan J held that offences under the "neglect" limb of s 59(1)(*b*) CDSA would only attract a custodial sentence where the director had acted recklessly (and not merely negligently).

(c) On the facts of *Abdul Ghani*, the learned judge found that the offender had acted negligently in relation to three of the CDSA charges and recklessly in relation to the remaining three. It was on the basis of the latter finding that he considered the related CA offence to have been

> "predominantly tainted with the *mens rea* of recklessness", so that a custodial sentence was warranted (at [172]).

78 This aspect of the analysis was neither commented on nor discussed in either *Chai Chung Hoong v Public Prosecutor* [2023] 4 SLR 1195 or *Wong Poon Kay v Public Prosecutor* [2024] 4 SLR 453, these being the more recent decisions in which this aspect of *Abdul Ghani* was considered. In both these cases, the focus was on whether the offender was more or less culpable than the appellant in *Abdul Ghani*. We were therefore satisfied that the sentencing guidelines set out in *Abdul Ghani* for offences under s 157(1) of the CA did not constitute a practice so entrenched as to warrant the application of prospective overruling.

79 The entrenchment of *Abdul Ghani* aside, we were mindful that the doctrine of prospective overruling will not generally apply where there was an error in the reasoning of the precedent in question, or where that precedent could be distinguished from the instant case:

> (a) In *Abdul Ghani*, Chan J proceeded on the basis that the custodial threshold would not be crossed if there was "neglect" attributable to mere negligence. This would, by definition, exclude the Respondent's case, given that it involved a business model that entailed an intention not to exercise reasonable diligence in overseeing the activities of the companies he had incorporated for his clients. To that extent, *Abdul Ghani* was distinguishable.
>
> (b) If, on a proper reading of *Abdul Ghani*, Chan J would have considered the instant facts to fall within the rubric of "neglect" under s 59(1)(*b*) of the CDSA (as opposed to "consent or connivance"), or

"neglect" attributable to mere negligence, then that would have been an erroneous application of the relevant approach.

(c) On either footing, we would not have been bound by the approach taken in *Abdul Ghani.*

80 It was for these reasons that we considered there to have been no merit to the Respondent's proposed CR Application. There was accordingly no basis for CM 17, which we therefore dismissed summarily.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Vincent Hoong
Judge of the High Court

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