IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 144

Magistrate's Appeal Nos 9301/2019/01 and 9301/2019/02

Between

Public Prosecutor

… *Appellant in MA 9301/2019/01*
Respondent in MA 9301/2019/02

And

Wong Chee Meng

… *Respondent in MA 9301/2019/01*
Appellant in MA 9301/2019/02

Magistrate's Appeals No 9302/2019/01 and 9302/2019/02

Between

Public Prosecutor

… *Appellant in MA 9302/2019/01*
Respondent in MA 9302/2019/02

And

Chia Sin Lan

… *Respondent in MA 9302/2019/01*
Appellant in MA 9302/2019/02

JUDGMENT

Public Prosecutor
v
Wong Chee Meng and another appeal

[2020] SGHC 144

High Court — Magistrate's Appeal Nos 9301 and 9302 of 2019
Sundaresh Menon CJ
19 May 2020

16 July 2020 Judgment reserved.

Sundaresh Menon CJ:

Introduction

1 Mr Wong Chee Meng ("Wong") and Mr Chia Sin Lan ("Chia") pleaded guilty to three charges of the aggravated offence of participating in a corrupt transaction with an agent under s 6 read with s 7 of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("the PCA"). They also consented to having two similar charges taken into consideration for the purpose of sentencing. The district judge ("the District Judge") who heard the matter sentenced Wong and Chia to aggregate sentences of 27 months' imprisonment and 21 months' imprisonment respectively, and also imposed a penalty of S$23,398.09 on Wong under s 13 of the PCA.

2 The Prosecution appealed against the District Judge's decision on the basis that the sentence imposed was manifestly inadequate. The Prosecution

also sought an attachment order under s 319(1)(*b*) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") to enforce payment of the penalty imposed. Both Wong and Chia filed cross-appeals on the basis that the sentence imposed was manifestly excessive.

Background

3 The facts are drawn from the joint statement of facts which Wong and Chia admitted to without qualification (the "JSOF").

4 Wong was an employee of CPG Facilities Management Pte Ltd ("CPG"), the managing agent of Ang Mo Kio Town Council ("AMKTC"). Pursuant to his employment, Wong was appointed as the General Manager of AMKTC in November 2013 and held a concurrent appointment as Secretary of AMKTC until November 2016. In these capacities, Wong was in charge of AMKTC's operations and his duties included overseeing and providing inputs on the selection of contractors for the execution of works. Wong was privy to important contract information and attended meetings at which contractors were recommended and selected.

5 Chia was a shareholder and the directing mind and will of two companies, 19-ANC Enterprise Pte Ltd ("19-ANC") and 19-NS2 Enterprise Pte Ltd ("19-NS2") (collectively, "the Companies"). Chia held 50% of the shares in 19-ANC and 40% of the shares in 19-NS2. 19-ANC was in the business of, among other things, tendering for construction-related works at various Town Councils, while 19-NS2 acted mainly as a subcontractor to 19-ANC.

6 Wong and Chia were introduced to each other in February 2015 by either Mr Tay Eng Chuan ("Tay") or Ms Alisa Yip ("Yip"), both of whom were shareholders in 19-NS2.

7 Between 2014 and 2016, Wong received various types of gratification as inducement for advancing the business interests of the Companies in their business dealings with AMKTC. Wong and Chia each pleaded guilty to three charges under s 6 read with s 7 of the PCA corresponding to three types of gratification given to Wong, which were all procured or provided by Chia. The first type consisted of a discount given to Wong in relation to the purchase of a motor car from 19-ANC ("the Discount Charge"). The second type consisted of remittances made to Wong's mistress in China ("the Remittance Charge"). The third type consisted of entertainment expenses incurred at various establishments ("the Entertainment Charge").

8 Before considering the proceeded charges in greater detail, it is helpful to digress briefly here in order to set out the processes in place at AMKTC to decide on the award of contracts. This will help explain precisely how Wong was able to, and in fact did, intervene to advance the interests of the Companies. There were two mechanisms for the award of contracts by AMKTC. The first was by tender, which was employed for larger scale works. The contracts department of AMKTC (the "Contracts Department") would publicly call for tenders and interested contractors would submit their bids. This would sometimes be followed by an interview with shortlisted candidates conducted by Wong, the Secretary of the Estate Maintenance Committee ("EMC"), the relevant property managers and members of the Contracts Department. A Tender Evaluation Report ("TER") would be prepared by the contract manager in charge of the tender and vetted by Wong, who would give his input on the draft and propose amendments. The TER would include a recommendation to award a contract based on the "Price Quality Methodology" ("PQM") and would be submitted to the EMC. The EMC, in turn, would make a recommendation to the Town Council, which would then vote on whether to accept the EMC's recommendations.

9 The second mechanism was called an Invitation to Quote ("ITQ") and this was used for smaller scale works valued at less than S$70,000. The Contracts Department would invite contractors to submit quotes for these projects. The list of invited contractors was prepared by the Contracts Department and approved by Wong. Based on the quotes received, a recommendation as to the contractor to which a particular project should be awarded would be made by the Contracts Department to Wong and the Chairman of AMKTC, and the contractor's appointment depended upon securing the approval of both of them.

The Discount Charge

10 As mentioned above at [7], the Discount Charge related to a discount that was extended to Wong when he purchased a motor car from 19-ANC. This occurred sometime towards the end of 2014, when Wong was looking to purchase a new motor car and informed Yip of this. Yip told Wong that 19-ANC was looking to upgrade a 16-month-old motor car that it owned, and that Wong could consider purchasing it. Wong wanted a discount because of the motor car's high mileage. Yip then discussed this with Chia, who had yet to be introduced to Wong (see [6] above). Chia decided to sell the motor car to Wong at a discounted price to gain favour for the Companies with AMKTC.

11 The motor car in question was estimated to be worth S$85,000 at the time. Wong purchased the motor car from 19-ANC at a price of S$75,000. As part of the transaction, 19-NS2 also purchased Wong's old motor car for S$20,000 and then traded it in for S$16,500, incurring a loss of S$3,500. The overall discount obtained by Wong from the transaction, taking into account the loss that was absorbed by 19-NS2 on its purchase of Wong's old motor car, thus worked out to about S$13,500.

The Remittance Charge

12 The Remittance Charge related to two overseas remittances made to Wong's mistress Ms Xu Hongmei ("Xu") in China between June 2015 and November 2015.

13 The first remittance occurred in June 2015 when Xu asked Wong to transfer her some money for renovations to her home. Wong approached Chia who, together with Tay, decided to remit S$20,000 (approximately RMB 92,400) to Xu through an intermediary. In the event, Xu eventually received RMB 80,000, the balance having been retained by the intermediary.

14 The second remittance took place in November 2015 when Xu informed Wong that she had fallen victim to an investment scam and had lost around RMB 50,000 (approximately S$10,480). Wong again approached Chia who agreed to transfer RMB 50,000 to Xu. A sum of RMB 50,000 was transferred to Xu through an intermediary.

15 In total, the remittances made by Chia to Xu amounted to about RMB 130,000 (approximately S$27,796.02).

The Entertainment Charge

16 The Entertainment Charge related to entertainment expenses incurred by Chia at various KTV lounges, restaurants, spas and a hotel totalling S$34,070.04. The Entertainment Charge was an amalgamated charge under s 124(4) of the CPC and covered 29 separate occasions between 18 May 2015 and 13 July 2016. All the expenses incurred by Chia on these occasions were made the subject of the Entertainment Charge, without any apportionment of

the amounts spent on persons other than Wong who might have been present at the time.

17 Considerable effort was expended to conceal the entertainment expenses incurred in cultivating Wong. Chia initially paid such expenses in cash and was reimbursed these sums by Tay. Later, Chia began charging these expenses to a corporate debit card maintained by one of Tay's companies. Tay kept a handwritten record of cash claims made by Chia, keeping these off the corporate books, and separately recorded the debit card expenses that were incurred.

The charges taken into consideration

18 Apart from the charges that they pleaded guilty to, Wong and Chia also each consented to having two charges taken into consideration for the purposes of sentencing. The first of these related to Chia procuring the employment of Wong's daughter-in-law by a company, with S$8,247.67 of her salary being paid for by 19-ANC. The second concerned Chia's payment of S$2,527.76 for a mobile phone line which was used by Wong.

Wong's actions on behalf of 19-ANC and 19-NS2

19 The various types of gratification given to Wong, unlike in many cases of this nature, were not tied to him showing favour to the Companies in any particular transaction. Rather, they were given to cultivate Wong such that he would become beholden to Chia and behave in a manner that would advance the business interests of the Companies in dealings with AMKTC.

20 Wong advanced the business interests of the Companies with AMKTC in various ways, including in relation to some specific tenders:

(a) First, in a tender for repair and redecoration works pertaining to Housing and Development Board ("HDB") residential blocks in the Teck Ghee Division in August 2015, 19-ANC and 19-NS2 were the second-lowest bidders for the tender. Yip then informed Wong that the lowest bidder, Foong Ah Weng Construction Pte Ltd ("Foong Ah Weng"), had recently been subject to a stop work order by another Town Council. Following from this, Wong directed AMKTC staff to look into the matter, and this resulted in Foong Ah Weng's PQM score being adjusted downward. Consequently, 19-NS2 was awarded the tender. Wong was recorded as having highlighted the unsatisfactory track record of Foong Ah Weng and recommending 19-NS2 during the EMC meeting to determine which contractor should be awarded the tender.

(b) Second, in a tender for repair and redecoration works pertaining to HDB residential blocks in the Yio Chu Kang Division in March 2015, Wong supported the award of the contract to 19-ANC over the lowest bidder Aik San Construction Pte Ltd ("Aik San"), asserting that 19-ANC, unlike Aik San, had experience painting markets. During the preparation of the TER, Wong also inserted a line to emphasise the importance of prior experience in painting markets due to the timelines involved.

(c) Third, in a tender for a contract to supply low emission incense burners in August 2016, Wong instructed his staff to prioritise eco-friendly features because he knew that 19-ANC's proposal was the most eco-friendly amongst those participating in the tender process. Wong also gave instructions to increase the PQM score of 19-ANC while reducing those of a competitor. Wong further denied the requests of other bidders for additional time to produce a mock-up that met

AMKTC's requirements. This meant that the competitors were unable to compete on equal terms with 19-ANC, which was the incumbent contractor supplying incense burners to AMKTC under a prior award.

21 Wong also advanced the business interests of the Companies with AMKTC in relation to ITQs. Wong influenced the staff in the Contracts Department to include 19-ANC in the list of contractors invited to quote for jobs. This meant that 19-ANC was automatically included in the list of invited contractors on the understanding that this was Wong's preference, unless it was incapable of providing the required works.

22 Wong also provided inputs, advice and assistance to the Companies by affording access to and maintaining an open channel of communication with Yip and Chia. Examples of this included: (a) assisting with the taking of photos and videos of a testing session for the eco-burner tender and seeking Yip's views on the drafting of the TER when 19-ANC was one of the bidders (see [20(c)] above); (b) advising on the appropriate bid pricing in relation to a tender; (c) sharing information about personnel changes at AMKTC; and (d) assisting to resolve disputes that sometimes cropped up between AMKTC staff and the Companies' staff in relation to the performance of contracts.

Decision below

23 The decision of the District Judge is reported as *Public Prosecutor v Wong Chee Meng and others* [2019] SGDC 244 ("the GD"). As Wong and Chia had pleaded guilty, the GD focused on issues related to sentencing.

24 The District Judge considered several High Court authorities and found that the following sentencing factors were relevant to his decision on sentence (GD at [45]):

(a) the triggering of the public service rationale;

(b) the seniority and position of the receiver within the organisation;

(c) the high level of control enjoyed by the receiver;

(d) the size of the gratification;

(e) the motivation of the offenders;

(f) the extent of premeditation and concealment by the giver; and

(g) possible mitigating factors.

25 The District Judge considered that the public service rationale was triggered because although CPG was a private company, it exercised some of the functions and duties of AMKTC under the Town Councils Act (Cap 329A, 2000 Rev Ed) (GD at [46]). Further, Wong occupied a position of seniority and Chia, the giver of gratification, was aware of Wong's authority and overall control of operations within the organisation (GD at [47]).

26 Although the total amount of gratification was about S$86,000 (including the charges taken into consideration), that had to be accounted for by considering the amount involved in each charge. The District Judge also considered that the payments which were the subject of the Remittance Charge could not be seen in the same light as an outright payment to Wong because these were in fact loans. As for the entertainment expenses, the aggregate sum of S$34,070.04 had to be viewed in the context of having arisen out of 29 separate occasions, with the Prosecution accepting that the amount spent on Wong personally was only about S$7,000. In short, Wong was not the sole beneficiary of the entertainment expenses (GD at [48]).

27 Specific to Wong, there were a number of aggravating factors including: (a) the fact that he initiated the purchase of the motor car through Yip and asked Chia to provide financial help for his mistress; (b) the fact that the interventions by Wong demonstrated a flagrant abuse and breach of trust on his part; and (c) the fact that Wong had betrayed the trust of the Town Council as its General Manager. In this regard, his actions were particularly reprehensible given that he was well acquainted with CPG's code of conduct and had even reminded his staff of the need to avoid corrupt dealings with contractors (GD at [49]).

28 As for mitigating factors in favour of Wong, the District Judge found that these were: (a) the fact that the offences were his first brush with the law after an exemplary career; (b) the fact that he pleaded guilty (albeit midway through the trial); and (c) the fact that he cooperated fully with authorities (GD at [50]).

29 The District Judge specifically rejected a number of mitigating factors raised by Wong. First, he did not accept that the offences were committed not out of greed but due to the close friendship between Wong and Chia. The District Judge found that Wong clearly committed the offences for financial gain. In respect of the Entertainment Charge, while Wong might also have paid for some entertainment expenses on some occasions, this did not reduce his culpability because he was aware that Chia's payments were laced with a corrupt intent and that he would be beholden to Chia (GD at [51]–[52]). Second, he also did not accept that the offences were in the nature of a one-off indiscretion (GD at [53).

30 As regards Chia, the District Judge found that there was clear premeditation on his part in the manner he went about cultivating Wong to advance the business interests of the Companies. Chia had also gone to

considerable lengths to conceal the gratification given to Wong. The mitigating factors were his plea of guilt and his lack of antecedents (GD at [54]–[56]).

31 Wong and Chia were sentenced as follows:

Wong – Aggregate sentence 27 months' imprisonment	
Charge	Sentence
Discount Charge	12 months' imprisonment (consecutive)
Remittance Charge	15 months' imprisonment (consecutive)
Entertainment Charge	12 months' imprisonment (concurrent)
Chia – Aggregate sentence 21 months' imprisonment	
Discount Charge	9 months' imprisonment (consecutive)
Remittance Charge	12 months' imprisonment (consecutive)
Entertainment Charge	12 months' imprisonment (concurrent)

In arriving at his decision, the District Judge had regard to a number of precedents cited in *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) ("*Sentencing Practice in the Subordinate* Courts") and noted that these generally suggested that the courts would impose imprisonment sentences of between 6 and 12 months for offences under s 6 read with s 7 of the PCA that involved gratification amounts between S$5,000 and S$15,000. However, he did not specify the specific cases he had regard to (GD at [67]).

32 The District Judge additionally imposed a penalty of S$23,398.09 (with one month's imprisonment in default) on Wong under s 13 of the PCA comprising the following sums: (a) the S$13,500 car discount; (b) S$7,370.33 in respect of gratification received in the form of entertainment; and (c)

S$2,527.76 being the amount of the phone bills paid by 19-ANC on Wong's behalf (GD at [77]).

The parties' arguments on appeal

Wong's arguments on appeal

33 Wong argued that the sentence imposed by the District Judge was manifestly excessive and should be reduced to an aggregate imprisonment term of between 11 to 14 months in line with precedent cases comprising the following individual sentences:

(a) three months' imprisonment for the Discount Charge;

(b) six months' imprisonment for the Remittance Charge; and

(c) eight months' imprisonment for the Entertainment Charge.

34 According to Wong, the District Judge failed to consider a number of mitigating factors. First, it was contended that Wong was facing difficulties in his personal life, including divorce proceedings, at the time some of the offences were committed. Second, it was submitted that Wong had not been motivated by greed or personal benefit. Instead, it was suggested that the offences, with the exception of the Discount Charge, were committed in the context of a close friendship between Wong and Chia. Third, it was submitted that Wong himself paid significant sums of money for entertainment, totalling S$16,382.23 on 18 occasions between August 2015 and September 2016. Fourth, it was submitted that Wong had also been punished for his mistakes through the loss of his employment and reputation and that the "clang of the prison gates" principle should apply to Wong and result in the imposition of a relatively short custodial sentence.

35 It was further submitted that the District Judge had erred in finding that there was a "flagrant abuse and breach of trust" and "betrayal … of the trust of the Town Council" by Wong. There was no abuse or breach of trust on the part of Wong, and AMKTC did not, in fact, suffer any actual harm.

36 Finally, Wong contended that the District Judge erred in finding that Wong was more culpable than Chia in respect of the Discount Charge and the Remittance Charge and therefore in imposing a higher sentence on Wong for these offences. The District Judge found that Chia deliberately set out to cultivate Wong. In all the circumstances, there was no reason to find Wong more culpable than Chia.

Chia's arguments on appeal

37 Chia likewise contended that the sentences imposed by the District Judge were manifestly excessive, being higher than those imposed in similar precedent cases. It was submitted that an aggregate imprisonment term of 12 months' imprisonment with the following individual sentences would be appropriate:

(a) five months' imprisonment for the Discount Charge;

(b) five months' imprisonment for the Remittance Charge; and

(c) seven months' imprisonment for the Entertainment Charge.

38 Chia submitted that the District Judge erred in the following respects: First, the District Judge accorded insufficient weight to the fact that no harm was caused by the offences. There was no evidence that Wong had compromised the protocols for tenders and ITQs or that AMKTC suffered any pecuniary harm. There was also no evidence that the gratification given to Wong

led to an increase in the number of contracts awarded to the Companies. Second, the District Judge placed excessive weight on the fact that Wong was the General Manager of AMKTC. Wong could not directly award contracts to the Companies but rather had to convince members of the EMC in accordance with AMKTC's processes. Third, the District Judge placed insufficient weight on the fact that Wong and Chia were close friends. This played a part in Chia's willingness to pay entertainment expenses and assist Wong in remitting moneys to his mistress. The effect of this was that the offences could not be considered to have been sustained or premeditated.

39 Chia also seemed to argue that certain moneys of the Companies which were frozen during investigations ought to be released as the Prosecution had not proven these were corrupt gains.

Prosecution's arguments on appeal

40 The Prosecution, on the other hand, argued for the enhancement of the sentences imposed on Wong and Chia on the basis that those imposed by the District Judge were manifestly inadequate.

41 The Prosecution contended that the District Judge made a number of erroneous findings which were contrary to the JSOF. First, the District Judge seemed to treat the overseas remittances made by Chia to Wong's mistress as loans rather than outright payments and took the view that this, for some reason, rendered the offence less serious. Second, the District Judge seemed to limit the amount of the gratification in the Entertainment Charge to a sum of about S$7,000 as reflecting the amount that was spent on Wong personally. Third, the District Judge seemed to think that the contracts awarded to the Companies by AMKTC had not been shown to have been obtained due to Wong's influence, leading him to incorrectly treat the offences as less serious.

42 The Prosecution also argued that the District Judge failed to take into account a number of aggravating factors, while placing excessive weight on the offender-specific mitigating factors. First, while the District Judge referred to Wong's position of authority as General Manager of AMKTC in the GD, he did not make mention of his concurrent appointment as Secretary. Wong's dual appointments meant that he occupied a critical role and enjoyed a "high degree of trust and confidence". Second, while the District Judge appeared to recognise in the GD that the offences were sustained and persistent, he did not regard this as an independent aggravating factor. Third, the District Judge failed to consider the grave public disquiet which these offences gave rise to. The offences had the propensity to erode trust in Town Councils, which are a unique and important aspect of governance in Singapore. Fourth, the District Judge ought not to have placed any mitigating weight on Wong's career because this led to the position of trust and authority which he enjoyed and abused in committing the offences. Any mitigating weight afforded by Wong's good character was in any case offset by the importance of general deterrence in corruption cases. Fifth, the District Judge ought not to have placed much weight on Wong and Chia's plea of guilt, or the fact that they were first offenders. They had pleaded guilty only midway through the trial and the offences could not be seen as aberrations since they persisted over a period of two years.

43 In determining the appropriate sentences to be imposed on Wong and Chia, the Prosecution submitted that a five-step sentencing framework modelled after that set out in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev*") should be adopted for offences under s 6 of the PCA (with a modified version for the aggravated offence under s 6 read with s 7 of the PCA, which was what Wong and Chia were charged under). Wong and Chia on the other hand both contended that because of the broad range of factual circumstances in which the offence may be constituted, such a framework was

neither appropriate nor likely to be helpful. In any case, applying the proposed framework to the facts of the case, the Prosecution contended that the following sentences would be appropriate:

Wong – Aggregate sentence 50 months' imprisonment		
Charge	Sentence imposed by the District Judge	Prosecution's Sentencing Position
Discount Charge	12 months' imprisonment (consecutive)	20 months' imprisonment (consecutive)
Remittance Charge	15 months' imprisonment (consecutive)	27 months' imprisonment (concurrent)
Entertainment Charge	12 months' imprisonment (concurrent)	30 months' imprisonment (consecutive)
Chia – Aggregate sentence 44 months' imprisonment		
Discount Charge	9 months' imprisonment (consecutive)	17 months' imprisonment (consecutive)
Remittance Charge	12 months' imprisonment (consecutive)	24 months' imprisonment (concurrent)
Entertainment Charge	12 months' imprisonment (concurrent)	27 months' imprisonment (consecutive)

44 Separately, the Prosecution sought attachment orders against Wong pursuant to s 319(1)(*b*) of the CPC to enforce the payment of the penalty imposed under s 13 of the PCA (see [32] above). The Prosecution argued that the District Judge had exercised his powers under s 319(1)(*b*)(i) of the CPC to

extend time for the payment of the penalty by six months on the understanding that Wong intended that this was to be set-off from the sum of S$65,200 which the Corrupt Practices Investigation Bureau ("CPIB") had seized from him. Given that Wong later changed his position to seek the return of all the seized funds, an attachment order should be made under s 319(1)(*b*)(iii)(A) of the CPC to ensure the disgorgement of any ill-gotten gains. The Prosecution contended that, had Wong taken the same position in the proceedings below, it would have made the same application to the District Judge.

Issues before the court

45 There were three issues I had to determine in this appeal:

(a) First, is it appropriate to develop a sentencing framework for offences committed under s 6 read with s 7 of the PCA and if so, what should that framework be?

(b) Second, assuming the answer to (a) is in the affirmative, how should such a framework be applied in the present case?

(c) Third, should an attachment order under s 319(1)(*b*) of the CPC be made against the sum of S$65,200 seized from Wong by the CPIB?

The appropriate sentencing framework for offences under section 6 read with section 7 of the PCA

The relevant legal provisions

46 Section 6 of the PCA is the relevant offence-creating provision which penalises corrupt transactions with agents:

> **Punishment for corrupt transactions with agents**
>
> **6.** If —
>
> (*a*) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business;
>
> (*b*) any person corruptly gives or agrees to give or offers any gratification to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or
>
> (*c*) any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,
>
> he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 5 years or to both.

47 Section 7 of the PCA applies to offences committed under ss 5 or 6 of the PCA where the corrupt transaction takes place in relation to contracts with the Government or public bodies:

> **Increase of maximum penalty in certain cases**
>
> **7.** A person convicted of an offence under section 5 or 6 shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with the Government or any department thereof or with any public body or a subcontract to execute any work comprised in such a contract, be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 7 years or to both.

Analysis

48 It can be seen that s 7 of the PCA is not itself an offence-creating provision. Rather, it is an enhanced punishment provision which applies where the offence committed under ss 5 or 6 of the PCA takes place in relation to contracts with the Government or public bodies. One of the consequences flowing from this is that the Public Prosecutor may elect to bring charges against an accused person for the basic offence under ss 5 and 6 of the PCA, even where the facts of the case could warrant invoking the enhanced punishment provisions in s 7 of the PCA. This calls for a degree of caution when comparing sentences imposed in other cases that might appear, at least superficially, to be similar and relevant to the case at hand. Indeed, in their submissions before me, both Wong and Chia relied on the sentences imposed in a number of cases where the accused persons had been charged with the basic offence under s 6 of the PCA. In my judgment, the sentences imposed in such cases would be of limited relevance in the present context given the different sentencing ranges prescribed by the PCA for the basic offence and for the aggravated form of the offence respectively.

A sentencing framework for offences under section 6 read with section 7 of the PCA is warranted

49 In my judgment, it is appropriate for this court to set out a sentencing framework for offences committed under s 6 read with s 7 of the PCA.

50 In reviewing the precedents, it becomes evident that the general approach towards sentencing in corruption cases has been to have regard to past cases which have identified a number of categories and factors pertinent to the sentencing process. Indeed, this was the approach adopted in the present case by the DJ, who relied primarily on precedents collated in *Sentencing Practice*

in the Subordinate Courts to calibrate the sentences to be meted out (GD at [67]). As this court recognised in *Lee Shing Chan v Public Prosecutor and another appeal* [2020] SGHC 41 at [34], such an approach is not always conducive to achieving broad consistency in sentencing across cases. Further, sentences which are either too high or too low may have an undesirable cascading effect on future cases.

51 The disadvantage that inheres in the lack of a sentencing framework is also reflected in the fact that I did not find the sentencing precedents cited by Wong and Chia to be of much assistance.

52 The first case cited by Wong is *Tjong Mark Edward v Public Prosecutor and another appeal* [2015] 3 SLR 375 ("*Tjong*"). The accused person, who was the director of business development of ST Electronics (Info-Software Systems) Pte Ltd, was charged with two counts of corruptly obtaining gratification as an agent under s 6(*a*) of the PCA for participating in a corrupt profit-sharing scheme. The gratification was paid in the form of two cheques for S$57,386.67 and S$30,000.00 respectively. The accused person was sentenced to eight weeks' imprisonment for the first charge and four weeks' imprisonment for the second charge. The sentences were ordered to run consecutively resulting in an aggregate sentence of 12 weeks' imprisonment. The facts of *Tjong* are clearly distinguishable from the present case. Unlike the accused person in that case, Wong and Chia were charged with the *aggravated* offence under s 6 read with s 7 of the PCA, and this, as I have noted, attracts significantly heavier penalties. More significantly, *Tjong* involved a case of private sector corruption.

53 Wong also relied on *Public Prosecutor v Peter Benedict Lim Sin Pang* [2013] SGDC 192 ("*Peter Benedict Lim*"). The accused person there claimed trial to one charge of corruptly obtaining gratification as an agent under s 6(*a*)

of the PCA and, following his conviction on that charge, consented to having seven other similar charges taken into consideration for the purposes of sentencing. The accused person, who was the Commissioner of the Singapore Civil Defence Force, was found to have accepted gratification in the form of oral sex from a representative of a vendor company and was sentenced to six months' imprisonment. *Peter Benedict Lim* can be readily distinguished from the present appeal. First, the accused person there was charged with the basic offence under s 6(*a*) of the PCA. Second, the gratification, which took the form of a sexual act, was of a different nature from that in the present case. Third, the interventions undertaken by the accused person on behalf of the vendor company were less egregious as compared to those in the present case. The accused person there had called the representative to enquire whether the vendor company supplied certain radiation monitors ahead of the public notification of a tender by SCDF for their purchase. This gave the vendor company advance notice and allowed it to prepare for the upcoming tender. The tender, however, did not result in an award. Crucially, there was no evidence that the accused person intervened in any capacity during the tender process to benefit the vendor company. In my judgment, *Peter Benedict Lim* plainly stands on a different footing from the present case, where Wong and Chia admitted that the gratification resulted in Wong actively advancing the interests of the Companies, including by intervening in both tenders and ITQs to benefit them.

54 The final case is my decision in *Public Prosecutor v Marzuki bin Ahmad and another appeal* [2014] 4 SLR 623 ("*Marzuki*"), cited by both Wong and Chia. In *Marzuki*, the accused person pleaded guilty to six charges of corruptly obtaining gratification as an agent under s 6(*a*) of the PCA. The accused person was an assistant property executive employed by Jurong Town Corporation and was tasked to conduct periodic checks and inspections at leased premises. After finding foreign workers housed at the premises in question without approval, he

came to an understanding with the manager of those premises that in exchange for his forbearance from reporting these violations, loans would be extended to him. The proceeded charges involved one loan of S$20,000 and five loans of S$1,000 each. The accused person was sentenced on appeal to a total of eight months' imprisonment. *Marzuki* is again of limited utility because it can clearly be distinguished. First, the accused person was charged with the basic offence under s 6(*a*) of the PCA. Second, the gratification received by the accused person (totalling S$25,000 in loans) was significantly lower than that in the present case. Third, the accused person in *Marzuki* could not be regarded as a senior public servant. This stands in contrast with Wong, who occupied one of the top executive positions in the AMKTC hierarchy.

55 Having determined that the cases cited to me are of no assistance, I consider that a sentencing framework would not only help me derive a suitable sentence in the present case but also aid sentencing judges, prosecutors and defence counsel in approaching the question of sentencing in a broadly consistent manner, having due regard to the salient factors. In coming to this decision, I recognise that this court had previously declined to set out a sentencing framework for offences under ss 5 and 6 of the PCA in *Public Prosecutor v Tan Kok Ming Michael and other appeals* [2019] 5 SLR 926 ("*Michael Tan*") on the basis that the wide range of factual scenarios caught by ss 5 and 6 of the PCA made it unlikely that a single sentencing framework could adequately cater for them (at [104]). As I have noted, similar objections to a sentencing framework were raised before me by counsel for Wong and Chia.

56 The fact that corruption occurs in a wide variety of circumstances does not, in and of itself, preclude the adoption of a sentencing framework. As the Court of Appeal noted in *Mohd Akebal s/o Ghulam Jilani v Public Prosecutor and another appeal* [2020] 1 SLR 266 (at [20(b)]):

> … [S]entencing guidelines are not meant to yield a mathematically perfect graph that identifies a precise point for the sentencing court to arrive at in each case. Rather, they are meant to guide the court towards the appropriate sentence in each case using a methodology that is broadly consistent.

57 The key point I emphasise is that the objective is to develop a "methodology that is broadly consistent", so that the court can arrive at outcomes in a broadly consistent way. This, in the final analysis, is what adherence to the rule of law strives towards. While I recognise that this may not always be achievable and that in some circumstances, the court may be aided in this effort by the passage of time and the accumulation of decided cases, I am satisfied that a sentencing framework modelled on the two-stage, five-step framework adopted in *Logachev* would be appropriate for cases of the sort I am faced with here. This, indeed, is similar to what the Prosecution has proposed.

58 That said, I do not propose to develop a sentencing framework that applies generally to *all* offences under ss 5 and 6 of the PCA.

59 First, s 5 of the PCA is of a much wider remit than s 6. This court in *Song Meng Choon Andrew v Public Prosecutor* [2015] 4 SLR 1090 at [31] observed that there was a degree of overlap between the two provisions, with s 5 likely being broad enough to encompass most if not all cases under s 6. But the converse is not necessarily true. The gravamen of the offence under s 6 of the PCA is rooted in the notion of *agents* who have allowed their loyalty to their *principal* to become suborned through the corrupt receipt of gratification. This stands slightly apart from s 5 of the PCA, which targets corrupt transactions more generally. Given this, there is the distinct possibility of different sentencing considerations being relevant for offences under s 5 of the PCA.

60 Second, I am not yet convinced (and in any case do not need to determine the point in order to dispose of the present appeals) that a sentencing framework for the aggravated form of the offence under s 6 read with s 7 of the PCA can be adapted for use with the basic offence under s 6 simply by making, as the Prosecution suggests, a downward adjustment to the indicative sentencing ranges to account for the lower sentencing range prescribed by the statute. My hesitation stems from the fact that the public service rationale will be implicated in virtually all cases falling within the aggravated form of the offence (meaning those charges under s 6 read with s 7 of the PCA). On the other hand, the basic form of the offence under s 6 of the PCA may or may not trigger the public service rationale and so this aspect, at least, might need to be separately considered. While I observed in *Public Prosecutor v Syed Mostofa Romel* [2015] 3 SLR 1166 ("*Romel*") at [22] that certain instances of corruption in the private sector could be equally, if not more, serious than corruption in the public sector, public sector corruption is still typically regarded as the greater evil, as evidenced by the principle that custodial sentences are, at least presumptively, the norm where the public service rationale is triggered: see *Public Prosecutor v Ang Seng Thor* [2011] 4 SLR 217 ("*Ang Seng Thor*") at [33]. Given the role which the presence of the public service rationale may play in sentencing for the basic offence under s 6 of the PCA, this raises the distinct possibility that any sentencing framework would have to be applied differently based on the presence or absence of this factor. As I did not have the benefit of arguments on this point, I leave the question of a sentencing framework for the basic offence under s 6 of the PCA for a future case.

61 For these reasons, the framework I set out below applies only to offences brought under s 6 read with s 7 of the PCA.

(1) Offence-specific factors

62 I begin first by setting out the relevant sentencing considerations for offences under s 6 read with s 7 of the PCA. The following non-exhaustive offence-specific factors are relevant at the first step of the framework:

Offence-specific factors	
Factors going towards harm	Factors going towards culpability
(a) Actual loss caused to principal (b) Benefit to the giver of gratification (c) Type and extent of loss to third parties (d) Public disquiet (e) Offences committed as part of a group or syndicate (f) Involvement of a transnational element	(a) Amount of gratification given or received (b) Degree of planning and premeditation (c) Level of sophistication (d) Duration of offending (e) Extent of the offender's abuse of position and breach of trust (f) Offender's motive in committing the offence

63 One noticeable offence-specific harm factor omitted from the table above is the triggering of the public service rationale. As mentioned above at [60], this factor will inevitably be present in cases falling under s 6 read with s 7 of the PCA. For this reason, there is limited utility in including it at this stage of the sentencing framework. Rather, I think it preferable to incorporate the public service rationale into the third step of the sentencing framework, in determining the appropriate starting point within the indicative sentencing range that has been derived at the second step.

64 In that light, I elaborate on these factors, starting with factors which go towards determining harm. A key consideration in this regard is the actual harm

suffered by the agent's principal. Corruption offences which occasion real harm to the agent's principal are considerably more aggravated than those where the principal suffers little or no harm: see *Michael Tan* at [99(b)(ii)]. While the detriment to the principal will often be closely correlated to the profit obtained or benefit secured by the giver of gratification, this is not invariably the case. The court should be alive to the fact that detriment can arise in a number of different ways. Where, for example, the corrupt transaction relates to a tender exercise, as in the present case, it is possible that the principal may not suffer any direct pecuniary loss. To illustrate, consider a situation where the agent advises the corrupt giver of gratification on the appropriate amount to bid if it wishes to be selected for a project. In such a scenario, the principal might arguably suffer no direct monetary harm from the corrupt transaction and indeed, might even be said to have benefited from being able to receive the required services at an acceptable cost. This does not mean that the transaction is unobjectionable. On the contrary, in such a case, the fact remains that the agent-principal relationship has been suborned by the agent's failure to disclose the true position to the principal, including the personal benefits the agent has received without the principal's knowledge.

65 Further, it will also be apposite for the sentencing court to have regard, separately from the harm to the principal, to the benefits obtained by the giver of the gratification in corrupting the agent-principal relationship. While this will often consist of the profits which are realised by the giver of gratification being able to enter into specific profitable transactions, the court should be alive to other less readily apparent but nonetheless very valuable benefits that the giver may derive from the corrupt transaction. Taking the facts of the present case, what Chia obtained from his cultivation of Wong was not so much securing favourable treatment for the Companies in any particular transaction, but rather having an insider in a senior position within AMKTC who – unknown to

AMKTC – would be watching out for Chia's and the Companies' interests by assisting with the provision of inside information, according them an extraordinary level of access, managing their relationships with Wong's staff and ensuring that the Companies were generally viewed favourably. These were extremely tangible and valuable, yet prone to being missed if not highlighted as real indicators of the benefit to the giver and of the harm caused to the principal by the offences. Of course, care should be taken to avoid double counting these factors against the accused person, but the point remains that the actual loss suffered by the principal and the benefits obtained by the giver of gratification need not be correlative and will often be distinct.

66 I digress briefly to address the Prosecution's argument that in corruption offences involving government contracts, the value of such contracts should be taken into account to determine the harm caused without needing proof of the actual loss to the victim or profit which the giver of gratification has obtained. I do not accept this. The gross value of a contract is generally an imperfect and ultimately unreliable proxy for the benefit a party derives from a corrupt transaction. For one thing, much of the contract value will reflect the actual cost incurred to execute the work or services in question. In short, the value of a contract says nothing about its profitability. Absent such information, it would unfairly penalise an accused person to treat the notional value of the contract in question as reflective of the profit or benefit accruing to the giver of the gratification. That is not to say this is always irrelevant. It might be the case that with a larger contract size, the risk of economic harm to the principal is correspondingly greater. If that is shown to be the case, the gross value of the contract may be relevant. Similarly, if the Prosecution is able to establish a link between the gratification given and the award of a specified contract, the profits obtained by the giver of gratification would be relevant in the determination of the appropriate sentence (see [65] above).

67 In addition, the court may consider the wider impact of corruption offences on society, which are addressed by the third and fourth factors set out above. Corruption is, by its nature, an insidious offence, capable of giving rise to harm that is less readily apparent but no less detrimental to society. In *Ang Seng Thor* at [46], V K Rajah JA recognised that one of the harms caused by corruption is its impact on society's expectations that transactions and decisions in both the private and public sphere will be carried out fairly and transparently. It may be relevant therefore to consider whether the corruption offences in question are of a sort that have the effect of causing loss to third parties, or generating a sense of unease in the general public. This might happen, for instance, where the corruption is of the sort which results in harm to the competitors of the giver of gratification, or where corruption is uncovered on a wide scale at the upper echelons of a public body. In such circumstances, a court may be justified in treating these as separate aggravating factors.

68 The final two factors relating to harm have been canvassed extensively in precedent cases. The involvement of a syndicate or group element in the commission of a corruption offence is in itself aggravating as raising the spectre of organised crime, which is detrimental to society: see *Logachev* at [52]–[53]. In the same vein, the presence of a transnational element also serves to aggravate an offence due to the greater difficulties involved in detecting and prosecuting such offences, as well as the need to take a firm and uncompromising stance against cross-border crime: see *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [42].

69 I turn to the offence-specific factors which go towards determining culpability.

70 The first factor, which requires some discussion, is the amount of gratification given or received. In *Ang Seng Thor* (at [46]), Rajah JA suggested that the size of the bribe is linked to both the harm caused by the offence and the culpability of the offender. In terms of harm, a larger bribe would indicate a greater degree of corrupt influence exerted on the receiver, which would in turn lead to a greater subversion of the public interest. As for culpability, the size of the bribe, being reflective both of the receiver's greed for monetary gain and the level of influence or advantage sought by the giver, could again be relevant.

71 In my judgment, it would be preferable, in the interests of conceptual clarity, to regard the quantum of the gratification as a factor going only towards culpability as far as the sentencing framework set out in this judgment is concerned. I agree with the observations in *Ang Seng Thor* that the quantum of gratification directly reflects the culpability of both the receiver and giver; an accused person who gives or receives a *larger bribe* is generally to be regarded as *more blameworthy*. While quantum may to some extent also serve as a barometer of the degree of harm caused, the degree of harm is sufficiently taken into account, for purposes of the sentencing framework here, by the offence-specific factors going towards harm which I have identified above. These cater for the diverse types of harm to which corruption offences may give rise (see [62]–[68] above).

72 There are two additional aspects of the quantum of gratification which merit further consideration: (a) the relevance of the gratification taking the form of a loan rather than an outright payment; and (b) the relevance of the receiver repaying some of the gratification to the giver.

73 In the course of oral arguments before me, defence counsel took the position that, all other things being equal, an accused person who receives

gratification in the form of a loan is less culpable than one who receives the same in the form of an outright payment. The primary authority cited in support of this proposition was *Marzuki*. However, as I pointed out to counsel, the distinction between gratification in the form of loans as opposed to outright payments in *Marzuki* was drawn in the context of a determination of the appropriate monetary penalty to order under s 13 of the PCA. While it makes sense to distinguish between the two when considering the disgorgement of illicit gains to avoid over-penalising the receiver, it does not follow that an accused person who receives gratification in the form of a loan is necessarily less *culpable* than one who is given an outright payment. In both cases, the quantum of the loan or payment is reflective of the receiver's greed or of the level of influence or advantage sought by the giver. I therefore do not think there is any material difference between gratification taking the form of an outright gift and that in the form of a loan as far as culpability is concerned.

74 Second, and relatedly, I do not think that the repayment of any of the gratification received by the receiver has any relevance as a mitigating factor, especially in the context of culpability. Corruption offences are different in nature from property offences, where an offender's voluntary restitution of items or benefits procured from the offence, in favour of the victim, prior to detection will have a material bearing on the sentence as an offender-specific mitigating factor. The justification for treating such actions as mitigating is that they go some way towards diminishing the harm suffered by the victims, and also serve as evidence of an accused person's remorse: see *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 at [50]. These considerations do not apply where the receiver of gratification in the form of a loan makes repayment to the giver. The giver of gratification, far from being a victim, is in effect a co-conspirator in a corruption offence. If credit is to be given at all for restitution, it would be in the situation

where it is made to a principal in respect of loss suffered as a result of a corruption offence (see [80] below which analyses voluntary restitution as an offender-specific mitigating factor). I leave for consideration when it arises, the situation of an offender who actually returns the gratification (or genuinely attempts to do so) as part of a sincere effort to resile from the corrupt transaction.

75 The remaining factors going towards culpability are well established and have been considered in *Logachev* (at [56]–[59] and [62]) and *Ye Lin Myint v Public Prosecutor* [2019] 5 SLR 1005 (*"Ye Lin Myint*") (at [51]–[53]). I therefore discuss them only briefly here. The degree of planning and premeditation and the level of sophistication are concerned with the gravity of the offence. Concerted efforts to avoid detection, such as through the falsification of accounts, would also rightly be considered as aggravating.

76 Next, the duration of offending may be relevant where the corruption offences are carried out over a significant period of time. However, as I cautioned in *Ye Lin Myint* at [50], the sentencing court should be careful not to regard this as a separate aggravating factor if there are several charges before the court such that it might choose instead to address the point by running sentences consecutively.

77 As regards the extent of the offender's abuse of position and breach of trust, while an agent will invariably occupy a position of trust in relation to his or her principal's affairs, there might be circumstances involving particularly egregious abuses of trust where a sentencing court would be justified in treating this as a separate aggravating factor. The key inquiry is the *degree* of trust reposed in the accused person, and correspondingly the level of loyalty expected from him or her. This might be the case, for example, where the agent occupies a senior position within an organisation tasked with the discharge of critical

functions. It goes without saying that a principal who appoints an agent to such a position ought to be able to rely on that agent's fidelity unquestioningly.

78 Finally, in relation to the motive of an accused person in committing a corruption offence, the relevance of this factor in any given case will depend on the facts. While the motive in corruption offences will usually be greed, there are situations in which an offender's motive might have some mitigating value. This could be the case, for example, where the giver of gratification does so to avoid harm being inflicted on himself or herself by the receiver: see *Romel* at [26(c)].

(2) Offender-specific factors

79 I turn now to the offender-specific factors, which do not directly relate to the commission of the offence in question and are generally applicable across all criminal offences. The following non-exhaustive considerations will be relevant at this stage of the analysis:

Offender-specific factors

Aggravating factors	Mitigating factors
(a) Offences taken into consideration for sentencing purposes (b) Relevant antecedents (c) Evident lack of remorse	(a) A guilty plea (b) Co-operation with the authorities (c) Actions taken to minimise harm to victims

80 These factors are well established in case law, and the only one which requires some elaboration is how actions taken to minimise harm to victims might, in the appropriate case, have some mitigating value. As alluded to above at [74], the most direct victim of a corruption offence committed under s 6 read with s 7 of the PCA will be the principal of the corrupt agent. Thus, voluntary

restitution, if it is to have mitigating value, should be that paid to the principal who has suffered loss as a result of the corruption offence.

81 I reiterate that the above-mentioned factors are not exhaustive of considerations that might be relevant to sentencing for an offence committed under s 6 read with s 7 of the PCA.

The sentencing framework

82 Having set out the relevant sentencing considerations, I turn to the five steps of the sentencing framework, modelled after that developed in *Logachev*.

83 The first step involves the identification of the level of harm caused by the offence and level of culpability, having regard to the list of offence-specific factors I have outlined (see [62] above). Both harm and culpability can be broadly classified into three categories scaled according to increasing severity.

84 The second step is to identify the applicable indicative starting range that would apply based on the offence-specific factors present. Considering the sentencing range in s 7 of the PCA, which ranges from a fine to an imprisonment term of up to seven years, I consider that the following sentencing matrix is appropriate:

Harm / Culpability	**Slight**	**Moderate**	**Severe**
Low	Fine or up to 1 year's imprisonment	1 to 2 year's imprisonment	2 to 3 years' imprisonment
Medium	1 to 2 year's imprisonment	2 to 3 years' imprisonment	3 to 4.5 years' imprisonment
High	2 to 3 years' imprisonment	3 to 4.5 years' imprisonment	4.5 to 7 years' imprisonment

It should be noted that the above matrix is intended to apply to accused persons who *claim trial*.

85 In oral arguments before me, the learned Deputy Public Prosecutor, Mr Jiang Ke-Yue, submitted that the court should set out a threshold number of offence-specific factors to determine the category into which a case falls. I do not think that such an approach is warranted. It presupposes that the offence-specific factors going toward harm and culpability all bear similar or equal weight, when that is not necessarily the case and, indeed, is usually sensitive to the facts and circumstances. In addition, as I recognised in *Ye Lin Myint* at [58], the categories of offence-specific factors may overlap to some degree. By focusing on the *number* of offence-specific factors rather than the *weight* to be accorded to each factor, the sentencing court would run the risk of double-counting the offence-specific factors in its sentencing assessment.

86 Once the sentencing court has identified the applicable sentencing range, the third step calls for the identification of the appropriate indicative starting point within that range. This entails examining the offence-specific factors once again to arrive at a conclusion of what the appropriate starting point of the

sentence should be. The court should adequately explain its reasoning in this regard. This is also where the sentencing court should have regard to the public service rationale, by reason of which, despite the fact that s 7 provides that the offence may be punishable with only a fine, it will typically attract a custodial sentence, with this only being departed from in exceptional cases: see *Romel* at [15], citing *Public Prosecutor v Chew Suang Heng* [2001] 1 SLR(R) 127 at [10]–[11].

87 The fourth step involves making adjustments to the indicative starting point to take into account offender-specific factors. This may result in the sentence moving out of the indicative sentencing range originally identified, but where this occurs the sentencing court should again set out its reasons for doing so: see *Logachev* at [80].

88 Finally, the fifth step calls for the making of any final adjustments to the sentence to take into account the totality principle.

Application of the framework

89 I now turn to apply this framework to the present case.

90 In my judgment, there were a number of offence-specific factors going towards harm.

91 First, Chia derived substantial benefits from his cultivation of Wong. Wong, as an insider in AMKTC, was able to provide Chia and the Companies with invaluable assistance and support, intervening on several occasions to ensure that their interests were protected or even advanced (see [19]–[22] above). The District Judge, relying on the JSOF, found that Wong had intervened on occasion in the award of tenders and ITQs by AMKTC to the

Companies (see GD at [19]). The District Judge, however, also appeared to have taken the view that "there [was] no evidence or basis to say that the contracts awarded … had been obtained due to [Wong's] influence in the granting of the contracts to the [Companies]". The District Judge found that the contracts were awarded in open tenders and that Wong's interventions did not "affect or interfere with the due process of tender, evaluation and the awards of these contracts" (GD at [59]). In my judgment, the District Judge erred in thinking that the latter set of observations were either correct or material, or somehow ameliorated the former set of observations. They were not correct because any intervention by Wong in the award of tenders and ITQs by AMKTC to the Companies would necessarily have affected the processes for the award of public contracts. The mere fact that Wong might not have been the ultimate decision maker awarding the contracts cannot be dispositive given that the JSOF makes clear that he was able to shape the critical inputs which went into the decision-making process (see [20]–[22] above). And in any event, the latter set of observations was immaterial because this was not a case about securing a particular contract; rather, it was about cultivating an agent, Wong, to conduct *his principal's affairs* in a manner that *advanced not the principal's interests but those of Chia's Companies*. As I have already noted, this was an egregious form of corruption, of considerable value to Chia and pernicious in its effect on Wong's relationship with his principal, AMKTC.

92 Second, and relatedly, the offences caused harm to third parties such as competitors of the Companies, who were forced to compete on unequal terms due to the favourable treatment accorded to the Companies by Wong. Though there was no evidence specifically that any of these competitors suffered the loss of business that would have been obtained but for Wong's interventions, this was not the issue. As I pointed out to the parties in the course of oral arguments, the public procurement process is built on fairness and transparency.

By having Wong surreptitiously advocating on the inside for the interests of the Companies and assisting in the submission of bids, the fundamental bases for the conduct of tenders and ITQs had been violated. This would have violated the legitimate expectations of honest businessmen competing with the Companies for these projects. They were entitled to assume that the process was being carried out in a fair and equitable manner. This was a factor which the District Judge unfortunately failed to appreciate in assessing the harm caused by the offences.

93 As to whether the public disquiet caused by the offences ought to be considered as a separate aggravating factor, I do not think in this case that it quite crosses this threshold. While the offences were undoubtedly serious, involving one of the most senior non-political employees in a Town Council, an institution that plays a central role in the lives of most Singaporeans, the evidence also showed that the scope of the corruption was isolated to just Wong. Given this, I am not satisfied that the offences gave rise to a level of public disquiet that would justify my treating this as a separate aggravating factor. Rather, I regard it as sufficient for Wong's seniority within AMKTC to be considered in assessing his and Chia's culpability for the offences.

94 In the circumstances, I assess the harm caused by the offences as falling within the lower end of the "moderate" category.

95 I now consider the offence-specific factors going towards culpability. The first relevant factor is the amount of gratification given or received. The amounts involved in the Discount Charge, Remittance Charge and Entertainment Charge, being S$13,500, S$27,796.02 and S$34,070.04 respectively, were sizeable. As will be clear from the discussion above at [72]–[74], I do not think the District Judge was correct to treat the Remittance Charge

as less serious on the ground that the gratification there might have been given in the form of loans, or that Wong had repaid some part of these sums to Chia. Both of these factors are simply irrelevant at the sentencing stage for the reasons I have explained. In respect of the Entertainment Charge, I do not think that the District Judge was right to focus on the sum of about S$7,000 which was said to be Wong's personal share of the entertainment expenses, rather than the sum of S$34,070.04 stated in the charge. The JSOF which Wong and Chia pleaded guilty to clearly sets out at paras 34–36 that the sum of S$34,070.04 constituted the gratification which Wong received in the form of entertainment. While the personal benefit accruing to Wong might be relevant in determining the appropriate financial penalty to be imposed under s 13 of the PCA, I do not think that the sentencing court, dealing with the cultivation of a corrupt agent through entertainment, should undertake a granular analysis to determine the quantum of benefit personally obtained by that agent at the sentencing stage. After all, the nature of the gratification in this context, which was entertainment, would almost inevitably entail socialising in the company of others. It is artificial to endeavour to isolate the amount expended specifically on the accused person. Moreover, the crux of the offence centres on the fact that an agent has allowed his or her loyalty to the principal to become suborned by another person, through the process of having that person pay for recreational activities which at times involved other persons who may or may not be related to the corrupt transaction. Seen in this light, the total cost of the recreational activities more accurately reflects the culpability of both the giver and the receiver. It is wrong to treat this as the equivalent of making an outright payment to the receiver of an amount corresponding to the value of that portion of the entertainment that was directly enjoyed by him.

96 Second, the offences were fairly sophisticated and involved considerable planning and premeditation, which I amalgamate to constitute a

single aggravating factor. As noted by the District Judge in the GD (at [54]–[55]), Chia deliberately sought to cultivate Wong over a period of time to advance the business interests of the Companies. Chia also disguised and concealed payments to Wong such as by channelling the remittances through an intermediary and paying for entertainment expenses either through a corporate debit card from one of Tay's companies or in cash. As for Wong, his interventions on behalf of the Companies were subtle and designed to make the offences hard to detect; these included playing up the Companies' strengths where possible, directing investigations into one of their competitors and generally providing advice and assistance through a direct and personal channel of communication with Yip and Chia.

97 Third, Wong abused his position as the General Manager of AMKTC and the high degree of trust reposed in him to commit the offences. It is clear from the JSOF that Wong occupied a position of trust and was tasked with discharging a number of important functions. In the case of the tenders, the TER, which was one of the primary documents relied on by the EMC in making its recommendation to the Town Council on which contractor's bid to accept, was vetted by Wong prior to submission. Where ITQs were concerned, Wong's responsibilities were even greater as he was one of the two people whose approval was necessary for any contractor's appointment. Given this, Wong's breach of duty, and Chia's procurement of it, were both particularly egregious. While the Prosecution contends that the District Judge insufficiently accounted for Wong's appointment as Secretary of AMKTC, I do not think that anything turns on this fact. The District Judge was clearly cognisant of the senior position which Wong held in AMKTC in sentencing Wong and Chia, and rightly considered it to be an aggravating factor.

98 Fourth, Wong and Chia were motivated by greed. Wong derived significant financial benefits from the offences, with the total amount of gratification in the proceeded charges totalling about S$75,366.06. Chia and his Companies also stood to benefit considerably from the award of public contracts. While both Wong and Chia contend that the offences have to be seen in the context of their close friendship, I do not accept this. The same argument had been raised before the District Judge and was rejected by him. Even if Wong and Chia subsequently became friends, that relationship had been tainted at the outset as seen in the corrupt intent that permeated the Discount Charge, which had occurred before the two even became acquainted (see GD at [12]). In my view, a more fundamental objection is that this argument is simply inconsistent with the JSOF which both Wong and Chia admitted to without qualification. Paragraph 18 of the JSOF makes it clear that the various categories of gratification provided to Wong were given "as inducement[s] to make him beholden to [Chia], 19-ANC and 19-NS2, so as to advance the business interests of 19-ANC and 19-NS2". Given this, it is not tenable for them to argue that the offences should be seen as misguided acts of friendship. I also express my doubts as to whether friendship has any mitigating value in corrupt transactions such as this. After all, a certain degree of proximity is almost inevitable in cases involving the cultivation of an agent. In that light, it seems perverse for the law to accord mitigating weight to a friendship which develops out of and in furtherance of their collaboration in a corrupt design.

99 As for the Prosecution's argument that the District Judge failed to adequately account for the protracted duration of the offending, it seems to me that this factor is already adequately accounted for in the fact that Wong and Chia each faced three charges, which necessitates that at least two of the sentences run consecutively under s 307 of the CPC. I thus do not include this as a separate aggravating factor in my analysis.

100 I next consider Wong's argument that the District Judge erred in finding that he was more culpable than Chia in respect of the Discount Charge and the Remittance Charge. The District Judge reached this conclusion on the basis that Wong initiated the purchase of the motor car through Yip and had approached Chia to provide financial help for his mistress (see [27] above). As a starting point, the principle of parity of sentencing as between the giver and recipient of gratification is not an inflexible or rigid rule. Rather, the sentencing court must have in mind all the relevant factors, including the degree of culpability of each offender and his or her unique circumstances: see *Marzuki* at [45]. Here, it appears that Wong was the party who initiated the events leading to the Discount Charge and the Remittance Charge. The District Judge was therefore entitled to find, in relation to the Discount Charge and the Remittance Charge, that Wong was the more blameworthy of the two.

101 In the light of the factors identified above, I hold that Wong's culpability falls within the "medium" category. As for Chia, his culpability in respect of the Entertainment Charge can be placed within the "medium" category, while he should be viewed as slightly less culpable than Wong in relation to the Discount Charge and Remittance Charge, placing his culpability at the higher end of the "low" category.

102 Based on the sentencing matrix set out above at [84], the appropriate indicative sentencing range on the basis of "moderate" harm and "medium" culpability" is a range of two to three years' imprisonment, while that of "moderate" harm and "low" culpability is a range of one to two years' imprisonment. Bearing in mind that Chia's culpability in relation to the Discount Charge and Remittance Charge falls at the higher end of the "low" category, and the fact that that the harm in this case falls at the lower end of the

"moderate" category, I am of the view that the following starting points within the sentencing ranges are appropriate:

Wong	
Charge	Starting point
Discount Charge	24 months' imprisonment
Remittance Charge	24 months' imprisonment
Entertainment Charge	26 months' imprisonment
Chia	
Discount Charge	18 months' imprisonment
Remittance Charge	20 months' imprisonment
Entertainment Charge	26 months' imprisonment

103 The main offender-specific factor which applies on the present facts is that Wong and Chia both pleaded guilty. While the Prosecution argues that no weight should be placed on this because they only pleaded guilty midway through the trial, I do not accept this submission. As was argued by the Defence in the proceedings below, the pleas of guilt only came about after the Prosecution withdrew a large number of the charges originally faced by Wong and Chia. There was also an undeniable saving of time and expense.

104 Also relevant is the fact that both Wong and Chia consented to having two charges taken into consideration for the purposes of sentencing (see [18] above).

105 I do not agree that any of the remaining factors raised by Wong (see [34] above) have any mitigating value. Any difficulties which Wong might have

been facing in his personal life at the time are not relevant. There is no evidence before the court to suggest that Wong suffered from any mental condition arising from these difficulties which had a causal or contributory link with the commission of the offences and could therefore lessen his culpability: see *Ho Mei Xia Hannah v Public Prosecutor and another matter* [2019] 5 SLR 978 at [37]–[42]. As for the applicability of the "clang of the prison gates" principle, I do not think this has any relevance. In *Tan Sai Tiang v Public Prosecutor* [2000] 1 SLR(R) 33, Yong Pung How CJ held at [39] that it would apply in cases where the convicted party is of good character and there are comparatively small sums of money involved. In such circumstances, a short prison term would suffice. That is plainly not the case here given that the amount of gratification in the proceeded charges was significant. Finally, I do not think the fact that Wong might, on occasion, have paid for entertainment expenses while out with Chia has any mitigating value whatsoever in the context of the present offences.

106 In all the circumstances, I am of the view that a reduction of four months' imprisonment per charge is warranted at the fourth step of the framework.

107 I come now to the final step of the framework which entails making further adjustments to take into account the totality principle. Under s 307 of the CPC, the court is bound to run at least two of the sentences imposed consecutively. I intend to run the sentences for the Entertainment Charge and the Discount Charge consecutively. Having regard to the overall criminality that is presented, I reduce the sentence for the Discount Charge for both Wong and Chia by three months to arrive at what I regard as the appropriate aggregate sentence for each of them. The appropriate individual sentences are thus as follows:

Wong	
Charge	Sentence
Discount Charge	17 months' imprisonment
Remittance Charge	20 months' imprisonment
Entertainment Charge	22 months' imprisonment
Chia	
Discount Charge	11 months' imprisonment
Remittance Charge	16 months' imprisonment
Entertainment Charge	22 months' imprisonment

108 In sum, I allow the Prosecution's appeals and substitute the sentences with those in the table above. The sentences for the Discount Charge and Entertainment Charge are to run consecutively, resulting in an aggregate sentence of 39 months' imprisonment for Wong and 33 months' imprisonment for Chia.

The attachment orders

109 The final issue concerns the Prosecution's application for an attachment order to enforce payment of the monetary penalty of S$23,398.09 that was imposed by the District Judge under s 13 of the PCA. As mentioned above at [44], the Prosecution argued that it had only agreed to the extension of time for Wong to pay the penalty based on his representations that he intended for this amount to be set-off against the moneys seized by the CPIB, and that it would have applied for an attachment order had Wong intimated that he intended to seek the return of all the seized funds. In oral arguments before me,

counsel for Wong, Ms Melanie Ho, took the position that Wong could only be subject to the default term if he did not pay the penalty because the order had been made for a penalty with a prison term in default of payment.

110 The principles governing such applications were discussed in *Tay Wee Kiat and another v Public Prosecutor and another appeal* [2019] 5 SLR 1033 ("*Tay Wee Kiat*") in the context of the enforcement of compensation orders under s 360(1) of the CPC, which is materially similar to s 319(1)(*b*) of the CPC which deals with fines. In *Tay Wee Kiat*, the Prosecution applied for examination and garnishment orders after the court had heard parties on the issue of compensation, and ordered compensation for the victim coupled with default imprisonment terms if this was not paid. The court declined to make the orders sought on the basis that it would risk undue protraction of proceedings. The court took the view that where the Prosecution sought a compensation order, it should consider which of the default mechanisms prescribed under the CPC should be utilised. This would place the court in a position to consider how best to deal with the case at hand (*Tay Wee Kiat* at [5]).

111 In my judgment, the same principles are applicable here. The Prosecution sought and obtained the imposition of a financial penalty. On the facts, it does appear that the District Judge granted Wong six months to make payment of the penalty on the basis that Wong intended to pay the sum out of the S$65,200 which had been seized from him and that some time was required to resolve a dispute with the Prosecution over his entitlement to the seized moneys. The Prosecution probably did believe that Wong intended to pay the penalty out of the seized funds. But it was not obliged to proceed on this basis at that stage. It could, for instance, have deferred the issue of what consequential orders were needed to address any failure to pay the penalty, such as a default term of imprisonment or an attachment order, if and when it became necessary

and possible to resolve this. It did not do that. Instead, a default order was made and that being the case, I see no basis for altering that order now, since it is perfectly capable of being carried out and it is not suggested that the District Judge erred in making it. In the circumstances, I decline to make the attachment order against the seized funds to enforce payment of the penalty.

Conclusion

112 For these reasons, the Prosecution's appeals are allowed. The sentences imposed by the District Judge are substituted with the following:

Wong – Aggregate sentence 39 months' imprisonment	
Charge	Sentence
Discount Charge	17 months' imprisonment (consecutive)
Remittance Charge	20 months' imprisonment (concurrent)
Entertainment Charge	22 months' imprisonment (consecutive)
Chia – Aggregate sentence 33 months' imprisonment	
Discount Charge	11 months' imprisonment (consecutive)
Remittance Charge	16 months' imprisonment (concurrent)
Entertainment Charge	22 months' imprisonment (consecutive)

113 Finally, Chia requested that the moneys of 19-ANC and 19-NS2 seized by the CPIB be released. There is no basis for me to deal with this given that the Companies are not party to the present appeals.

Sundaresh Menon
Chief Justice

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