IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 58

Court of Appeal / Criminal Reference No 1 of 2024

Between

Chang Peng Hong Clarence

… *Applicant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Statutory offences — Prevention of Corruption Act 1960 (2020 Rev Ed)]

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Chang Peng Hong Clarence
v
Public Prosecutor

[2024] SGCA 58

Court of Appeal — Criminal Reference No 1 of 2024
Tay Yong Kwang JCA, Steven Chong JCA and Belinda Ang Saw Ean JCA
29 July 2024

4 December 2024

Tay Yong Kwang JCA (delivering the grounds of decision of the court):

Introduction

1 The applicant in CA/CRF 1/2024 ("CRF 1"), Mr Chang Peng Hong Clarence ("Mr Chang"), referred the following question of law to the Court of Appeal (the "Question") after permission was granted by the Court of Appeal for him to do so:

> Under Section 13(1) of the Prevention of Corruption Act 1960 (the "PCA"), can a sentencing judge impose more than one penalty when an accused person has been convicted of two or more offences for the acceptance of gratification in contravention of the PCA?

2 Initially, in CA/CM 20/2023, Mr Chang filed an application for permission to refer three questions of law of purported public interest to the Court of Appeal pursuant to s 397(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC"). The original three questions included the Question

here. On 23 January 2024, we refused permission summarily for two of the questions and granted permission for the Question only.

3 Pursuant to s 397(3E) of the CPC, Mr Chang filed a subsequent application to amend one of the two questions for which permission was refused. This application was disallowed on 20 March 2024.

4 At the hearing of this matter, we answered the Question in the affirmative and recalibrated Mr Chang's in-default imprisonment term upwards to 120 months. We further ordered that if part payments for the fines are made, these payments will be applied to the charges in the order that they stand on record.

Facts

5 The facts are set out in the High Court's judgment in *Chang Peng Hong Clarence v Public Prosecutor and other appeals* [2023] SGHC 225 (the "GD"). Mr Chang first met Mr Koh Seng Lee ("Mr Koh") in 1997. Their relationship was not purely commercial. They were friends and their families went on holidays together.

6 Mr Chang joined BP as a Marine Support Executive in July 1997. He was promoted to Marine Trading Manager in November 1999 and then to Regional Operating Unit, Manager Fuels, in April 2003. In 2009, Mr Chang was designated Regional Marine Manager Fuels of the Global Residues Unit and his team covered oil trades in the Eastern Hemisphere.

7 Mr Koh was the sole shareholder and executive director of Pacific Prime Trading Pte Ltd ("PPT"). PPT was in the business of wholesale and retail of

trade of mineral fuels and lubricants. PPT was BP's trading counterparty between 2001 and 2015.

8 Between 31 July 2006 and 26 July 2010, over 19 transactions, Mr Koh transferred a total of US$3.95m from his HSBC Hong Kong bank account to Mr Chang's HSBC Hong Kong bank account. Mr Koh also transferred an aggregate of S$525,000 to Mindchamps City Square ("Mindchamps") from September 2009. Mindchamps was incorporated in September 2009 with Mr Koh and Mr Chang's wife as directors and equal shareholders. Mr Koh was paid $182,500 by Mindchamps between November 2014 and February 2015.

9 As a consequence of these transactions, Mr Chang faced 20 charges under ss 5(*a*) and 6(*a*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) (the "PCA") for corruptly receiving gratifications as an inducement to further the business interest of PPT with BP. Mr Chang was convicted on all the charges and sentenced to 54 months' imprisonment by the District Judge (the "DJ"). The DJ also ordered Mr Chang to pay a penalty of $6,220,095 pursuant to s 13(1) of the PCA, with an in-default imprisonment term of 28 months.

10 Mr Chang appealed against his conviction and sentence. The Prosecution cross-appealed against the sentence imposed on Mr Chang. In the General Division of the High Court, Justice Vincent Hoong (the "Judge") upheld Mr Chang's conviction for 19 charges and acquitted him on one s 6(*a*) charge: GD at [96] and [107]. The Judge allowed the Prosecution's appeal against sentence and increased Mr Chang's aggregate sentence to 80 months' imprisonment: GD at [129].

11 The Judge also substituted the sole penalty order with three penalty orders in the amounts of $1,796,090 (for the first to the fifth charges),

$1,905,520 (for the sixth to eleventh charges) and $2,175,985 (for the twelfth to nineteenth charges). The Judge adjusted the in-default imprisonment terms for the three penalty orders proportionately based on the relative amount of gratification. For the first penalty order, it was 651 days, for the second penalty order, it was 690 days, and for the third penalty order, it was 788 days. The total in-default imprisonment term was therefore 2129 days: GD at [178]–[182]. Based on an average of 30 days for each month, this worked out to be about 70.96 months' imprisonment.

12 As a result of the Judge's decision to substitute three penalty orders in place of the sole penalty order made by the DJ, the Question in this criminal reference arose.

Proceedings in the High Court

Prosecution's submissions in the High Court

13 The Prosecution submitted that following Mr Chang's conviction on 19 charges, the quantum of the penalty order should be $5,877,595. This sum was based on the total amount of gratification received in the 19 charges, converted to Singapore dollars. Mr Chang took the same position.

14 The Prosecution submitted that, among other things, the DJ erred by imposing only one penalty order on Mr Chang, which did not adequately incentivise the payment of the penalty. As Mr Chang's conviction on 19 charges was affirmed on appeal, the Prosecution submitted that the Judge should impose 19 penalties with each carrying an in-default term calibrated based on the amount of gratification set out in each charge. This should result in a total penalty of $5,877,595, in default 400 weeks' imprisonment (subject to the limits imposed by s 319(1)(*d*)(i) and 319(1)(*e*) of the CPC.

15 The Prosecution reasoned that the legislative purpose of s 13 of the PCA is to prevent the recipient of the gratification from retaining the benefit of that gratification. This was supported by a plain reading of s 13 of the PCA, which requires a court to impose a penalty "[w]here a court convicts any person of an offence committed by the acceptance of any gratification … ".The court should enforce penalties in a manner that actually disgorges offenders of their profits. This requires the court to impose in-default imprisonment terms for each penalty order on the basis of one penalty for each charge instead of ordering an in-default imprisonment term on a global basis.

16 For each penalty order under s 13 of the PCA, the court may impose an in-default term of up to 30 months' imprisonment pursuant to s 319(1)(*d*)(i) of the CPC. Section 319(1)(*d*)(i) of the CPC provides that the in-default imprisonment term should not exceed half of the maximum term of imprisonment fixed for the offence for which a fine is imposed. As the maximum term of imprisonment for a PCA offence is 5 years' imprisonment (or 60 months' imprisonment), the in-default imprisonment term should not exceed 30 months' imprisonment for each offence (see, ss 5 and 6 of the PCA).

17 Imposing in-default imprisonment terms on the basis of one penalty for each charge would also be consistent with s 319(1)(*e*). This provision allows the court to impose in-default sentences even where the total term of imprisonment would exceed the statutory maximum sentence that a court may impose for a single offence pursuant to s 303 of the CPC, provided the total term of imprisonment does not exceed the limits prescribed by s 306 of the CPC (which would be 20 years' imprisonment in this case).

18 Finally, the Prosecution submitted that such an approach would also facilitate the pro-rating of the global in-default imprisonment term in the event of part-payment being made for the penalty orders.

Mr Chang's submissions in the High Court

19 Mr Chang relied on the language in s 13(2) of the PCA, which states that "[w]here a person charged with 2 or more offences … is convicted of one or some of those offences, and the other outstanding offences are taken into consideration … the court may increase the penalty mentioned in subsection (1) …". The language used in s 13(2) suggests that the penalty imposed under s 13(1) is a global one that may be increased when there are charges taken into consideration ("TIC") for sentencing. Mr Chang also submitted that the Prosecution's approach – to reflect the TIC charges by only increasing one of the penalty orders – posed difficulties in that it was unclear why only one penalty should be increased because of the TIC charges.

20 Mr Chang argued that the Prosecution's approach risks imposing in-default imprisonment terms that exceed the actual primary sentences imposed for the offences and imposes an additional punishment on the offender. This cuts against the purpose of a penalty order which is to disgorge criminal profits rather than to punish an offender.

The Judge's decision

21 The Judge noted that it was undisputed that the revised quantum of the penalty order under s 13(1) of the PCA was $5,877,595: GD at [131]. As for the number of penalty orders that could be made, the Judge found that there were three possible interpretations (GD at [138]):

(a) First, the phrase "[where] a court convicts any person of an offence" would refer to each charge for a PCA offence. Where an offender faces more than one charge for a PCA offence, s 13(1) calls for the court to impose the number of penalty orders corresponding to the number of charges for the PCA offences ("First Interpretation").

(b) Second, the phrase "[w]here a court convicts any person of an offence" would refer to the occasion of conviction of an offender where one or more of the charges involved a PCA offence. Where an offender is convicted on one or more charges involving a PCA offence, s 13(1) calls for the imposition of a single global penalty order on the offender regardless of the number of charges ("Second Interpretation").

(c) Third, the approach under the Second Interpretation is adopted, save that s 13(1) does not limit the court to the imposition of a single global penalty order ("Third Interpretation").

22 The Judge found that all three interpretations were possible interpretations for two reasons. First, it was fundamentally ambiguous whether the phrase "where a court convicts any person of an offence" refers to each individual charge or the occasion of conviction where a person could be facing one or more charges. The Judge noted the similar language used in s 5 of the Probation of Offenders Act 1951 (2020 Rev Ed) (the "POA") and s 305(1) of the CPC, which pertain to a probation order and a reformative training sentence, respectively. Those provisions are applied in a global manner. Given the similar context of criminal sentencing and procedure, the court should avoid adopting an inconsistent construction of s 13(1) of the PCA.

23 Second, there is no indication on the face of s 13, or the PCA as a whole, to the effect that the court may only make a single penalty order: GD at [140]–

[147]. Although there is a reference to the singular "penalty" in the title of s 13 as well as in the wording of s 13(2), this could not be read as excluding the possibility of multiple penalty orders under s 13(1) under the First Interpretation and the Third Interpretation.

24 The Judge held that s 2 of the Interpretation Act 1965 (2020 Rev Ed) (the "Interpretation Act"), which provides that words in the singular include the plural, applies in the present case: GD at [148]–[149]. The Judge found that the purpose of s 13(1) of the PCA is to prevent a corrupt recipient from retaining his ill-gotten gains: GD at [150]. The Third Interpretation was the one most consistent with this purpose: GD at [154] and [163]. Under the First Interpretation, two offenders facing charges involving the same global amount of gratification could face widely differing durations of in-default sentences depending on how the charges are framed. This variance is contrary to the legislative intent of s 13(1) of the PCA: GD at [155] and [157]. The Second Interpretation was not preferable because it places a limit on the number of penalty orders that a court could impose under s 13(1) of the PCA. If the court could impose only a single penalty order on the occasion of each conviction, this would limit the effectiveness of enforcing the disgorgement of ill-gotten gains because of the statutory limit of 30 months' in-default imprisonment, no matter what the amount of gratification was: GD at [161]–[162].

25 Proceeding on the Third Interpretation, the Judge set out the following framework for calibrating the appropriate number of penalty orders and their respective in-default sentences. The court begins by looking at the total value of the gratification received by the offender. This is because the imposition of a penalty order is concerned with the total amount of benefit obtained by the offender rather than the arbitrary division of that benefit between the various charges.

26 Next, the court determines the duration of in-default imprisonment necessary to deter the offender from evading payment of the total penalty. This is a fact-specific exercise rather than a mathematical calculation. If the appropriate duration of in-default imprisonment that the court considers necessary exceeds 30 months' imprisonment, the court should consider imposing more than one penalty order, with the in-default sentences for the penalty orders running consecutively by virtue of s 319(1)(*b*)(v) of the CPC, for the total duration of imprisonment that the court considers just. In all but the most egregious cases, it is unlikely that more than one penalty order will be necessary.

27 Finally, the court should take a last look at the aggregate sentence to ensure that the in-default imprisonment term is not crushing overall. However, the application of the totality principle for penalty orders should be on a much less intrusive basis compared to in-default sentences imposed for fines: GD at [167]–[171].

28 Applying this framework, the Judge concluded that an in-default term of 70 months' imprisonment was appropriate: GD at [173]–[178]. As this exceeded the maximum in-default sentence that could be imposed under a single penalty order, the Judge imposed three penalty orders (GD at [178]–[180]):

(a) For the first to fifth charges, which totalled to $1,796,090, the Judge imposed an in-default sentence of 651 days' imprisonment;

(b) For the sixth to 11th charges, which totalled $1,905,520, the Judge imposed an in-default sentence of 690 days' imprisonment; and

(c) For the 12th to 19th charges, which totalled $2,175,985, the Judge imposed an in-default sentence of 788 days' imprisonment.

29 All the in-default sentences were ordered to run consecutively for a total of 2129 days' imprisonment by virtue of s 319(1)(*b*)(v) of the CPC: GD at [182]. As stated earlier at [11], this worked out to be about 70.96 months' imprisonment.

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The parties' cases in the Court of Appeal

Mr Chang's Case

30 Mr Chang argued that the court must impose a single penalty order that reflects the entire sum of gratification set out in all the PCA offences for a single conviction. He submitted that this would be consistent with the grammatical reading of the provision and its ordinary meaning for three reasons.

31 First, the opening sentence of s 13(1) of the PCA, "[w]here a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision", makes clear that the provision applies to the occasion of each conviction. Second, on a plain reading, s 13(1) empowers the court to impose only one penalty equivalent to the value of the gratification received as specified in the charge on which the offender was convicted. Further, Mr Chang argued that his interpretation was supported by the language of s 13(2) of the PCA, which empowers the court to increase the penalty in view of TIC charges, as opposed to allowing the court to impose multiple penalty orders. Third, Mr Chang submitted that the fact that s 13(1) of the PCA read with s 319(1)(*d*)(i) of the CPC limits the in-default imprisonment

term of a penalty order to 30 months' imprisonment supported his proposed interpretation.

32 Mr Chang also submitted that his interpretation was consistent with the legislative purpose of s 13(1) of the PCA. The purpose of s 13(1) is to deter corruption by sending a clear signal that offenders would not be permitted to retain the proceeds of their corrupt acts. Mr Chang's interpretation provided a clear and consistent basis for achieving this purpose by way of a single penalty order.

33 Moreover, Mr Chang's interpretation was consistent with the court's interpretation of similar phrases in other pieces of legislation, such as s 5 of the POA and ss 305(1) and 359(3) of the CPC. This interpretation also reflected the long-standing and deeply entrenched legal position because most of the past cases made only one penalty order regardless of the number of charges involved in each conviction.

34 In response to the Prosecution's interpretation, Mr Chang submitted that it would lead to arbitrary sentencing outcomes that depended on how the Prosecution exercised its discretion to frame the charges against an accused person. For instance, 10 penalty orders will be made for 10 charges where each charge alleged the receipt of gratification of $1m whereas only one penalty order will be made if the Prosecution framed only one charge alleging the receipt of gratification of $10m.

35 Similarly, it was submitted that the Judge's interpretation was unsatisfactory because it left the number of penalty orders completely arbitrary. Mr Chang further submitted that the rationale behind the Judge's interpretation was inconsistent with the underlying purpose of s 13(1) of the PCA in that the

provision does not aim to enforce disgorgement but instead seeks to deter the commission of offences under the PCA. The Prosecution's and the Judge's interpretations also potentially circumvented the statutory limit of 30 months' imprisonment on in-default imprisonment terms for penalty orders, as set out in s 319(1)(*d*) of the CPC. This risked violating the proportionality principle.

36 Finally, Mr Chang submitted that even if the Question was answered in the affirmative, the doctrine of prospective overruling should apply and multiple penalty orders should be ordered only in future cases.

Prosecution's Case

37 The Prosecution submitted that the legislative purpose of s 13 is to prevent corrupt recipients from retaining their ill-gotten gains. Interpreting s 13(1) of the PCA as allowing the court to impose multiple penalty orders would further this purpose. Such an interpretation was not restricted by the plain language of s 13. In relation to s 13(2) of the PCA, which empowers a court to increase the quantum of a penalty order in view of TIC charges, the Prosecution submitted that it is open to a sentencing judge to increase the amounts for any of the penalties for the charges proceeded with in order to account for the gratification reflected in the TIC charges.

38 Further, there have been cases where sentencing courts imposed multiple penalty orders. Imposing multiple penalty orders would lead to more equitable in-default sentences. The current sentencing practice with respect to in-default imprisonment terms for penalty orders under s 13(1) of the PCA lacked internal consistency and serving the in-default terms was a far more lucrative option for offenders who received large amounts of gratification as compared to offenders who received smaller amounts. In contrast, imposing multiple penalty orders would incentivise the disgorgement of ill-gotten gains.

39 The Prosecution submitted that Mr Chang's interpretation that s 13(1) allows for only one global penalty order would frustrate the legislative purpose of s 13 of the PCA. The practical implication of such an interpretation was that the maximum in-default imprisonment term would be capped at 30 months and this would constrain the court's power to incentivise disgorgement.

40 The Prosecution argued that the Judge's reasoning was flawed. While the number of individual in-default imprisonment terms would vary depending on the number of charges preferred against an offender, it did not necessarily follow that the aggregate in-default imprisonment term would vary. Adopting the Prosecution's interpretation would be consistent with the sentencing approach for fines and facilitate the development of effective precedents.

41 The Prosecution also submitted that the Judge's reference to other statutory provisions such as s 5 of the POA and s 305(1) of the CPC was inapposite. First, those provisions specify the imposition of singular orders. Second, those provisions provide for alternative sentences while s 13(1) of the PCA provides for additional orders. Third, the legislative intention behind the provisions are different – s 13 of the PCA is intended to disgorge while the other two provisions are intended to provide rehabilitative programmes for young offenders.

42 On the appropriate framework for calibrating the in-default imprisonment terms for penalties, the Prosecution submitted that if the Judge's interpretation is accepted, then the Judge's approach to calibrating the in-default imprisonment terms should be adopted. However, if the Prosecution's interpretation is adopted, then the appropriate framework ought to be as follows:

(a) First, the court should calculate the in-default terms for the individual charges. In so calibrating, the court must ensure the in-default term will deter the offender from opting not to pay the penalty. The court should consider:

(i) The quantum of gratification stated in the charge.

(ii) The personal circumstances of the offender (including the offender's financial condition and his ability to pay the penalty).

(iii) Other relevant facts such as the offender's last known salary and whether the offender was compelled to dissipate the gratification he received rather than retain it).

(b) Second, where necessary, the court should increase at least one penalty order to account for TIC charges under s 13(2) of the PCA.

(c) Third, the court should ensure that the global sentence is not crushing and ensure that the total sentences do not exceed the limit prescribed by s 306(4) of the CPC (*ie*, 20 years' imprisonment). The totality principle may apply on a much less intrusive basis compared to in-default sentences for fines but the court should still be mindful that the total default imprisonment term is not crushing. At this stage, the court should also consider whether the total default term will incentivise disgorgement. If it does not, the totality principle can have a boosting effect and lead to an increase in the in-default sentences to prevent the evasion of payment.

43 Applying its proposed framework, the Prosecution submitted that the following penalty orders should be made with the accompanying in-default imprisonment terms for this case:

Charge	**Quantum of penalty**	**Adjusted proposed in-default sentence (in weeks)**
1	473,310	56
2	556,290	66
3	461,820	55
4	153,040	18
5	151,630	18
6	535,290	63
7	302,940	36
8	295,700	35
9	288,520	34
10	210,750	25
11	272,320	32
12	282,080	33
13	296,200	35
14	305,820	36
15	227,130	27
16	147,360	17
17	433,950	52
18	278,740	33
19	204,705	24
Global in-default sentence		695 weeks (about 13 years and four months)

44 The Prosecution derived the above framework by using an average of about $1,200 in gratification for each day of in-default imprisonment ("the daily value"). The average was obtained from a study of 45 previous cases in which penalty orders were made under the PCA. The Prosecution first calibrated the appropriate in-default terms for each penalty order on the basis of one penalty order for each charge. This came up to a total of some 18 years' of in-default imprisonment. Bearing in mind that the Judge had sentenced Mr Chang to imprisonment for 80 months (or six years and eight months), the 18 years of in-default imprisonment would exceed the 20 years statutory limit in s 306(4) of the CPC. The Prosecution therefore adjusted the in-default terms for each charge to bring the global in-default term to 13 years and four months as indicated in the above framework. This global in-default term added to the imprisonment term would result in an overall 20 years' imprisonment (in the event of default in payment of the penalty orders). This result would then comply with the said statutory limit of 20 years.

45 The Prosecution submitted that the maximum sentence of 20 years (in the event of default of payment of the penalty orders) is justified on three grounds. First, it would be an effective deterrent against non-payment of the penalty orders. Second, the daily value is still higher than the average daily value of about $799 for default imprisonment terms imposed for large fines. Third, the total sentence is not crushing because Mr Chang has the means to pay the full amount of the penalty orders.

46 In the alternative, the Prosecution submitted that if the court answered the Question in the negative and decided that only one penalty order may be imposed under s 13(1) of the PCA for each occasion of conviction, then it should also make an attachment order. On this point, the Prosecution relied on its submissions before the Judge.

Issues to be determined

47 Three issues arose for our determination:

(a) First, whether the court may impose more than one penalty order pursuant to s 13(1) of the PCA when an accused person has been convicted of two or more offences for the acceptance of gratification in contravention of the PCA ("Issue 1").

(b) Second, whether, and if so, how, the in-default imprisonment term should be recalibrated here if the Question is answered in the affirmative ("Issue 2").

(c) Third, whether the doctrine of prospective overruling should apply in this case ("Issue 3").

Issue 1: whether a court may impose multiple penalty orders under the PCA

The proper interpretation of s 13 of the PCA

48 Section 13 of the PCA provides as follows:

> **When penalty to be imposed in addition to other punishment**
>
> **13.** —(1) Where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall, in addition to imposing on that person any other punishment, order him to pay as a penalty, within such time as may be specified in the order, a sum which is equal to the amount of that gratification or is, in the opinion of the court, the value of that gratification, and any such penalty shall be recoverable as a fine.
>
> (2) Where a person charged with 2 or more offences for the acceptance of gratification in contravention of this Act is convicted of one or some of those offences, and the other

> outstanding offences are taken into consideration by the court under section 148 of the Criminal Procedure Code 2010 for the purpose of passing sentence, the court may increase the penalty mentioned in subsection (1) by an amount not exceeding the total amount or value of the gratification specified in the charges for the offences so taken into consideration.

49 The ordinary meaning of s 13(1) dictates that the amount in a penalty order corresponds to the amount of gratification involved in the offence on which a person is convicted. As mentioned earlier, the Judge considered three possible interpretations of s 13(1) of the PCA:

(a) Under the first interpretation, where an offender faces more than one charge for a PCA offence, s 13(1) requires the court to impose one penalty order for each charge.

(b) Under the second interpretation, the phrase "[w]here a court convicts any person of an offence" refers to the occasion of conviction of an offender where one or more of the charges involved a PCA offence. Where an offender is convicted on multiple charges, s 13(1) directs the court to make only one global penalty order in respect of all the charges involving gratification.

(c) Under the third interpretation, a penalty order corresponds to the occasion of conviction but s 13(1) allows the court to make more than one penalty order.

50 The legislative purpose of s 13(1) of the PCA is to prevent corrupt recipients from retaining their ill-gotten gains. The Court of Appeal's statements in *Public Prosecutor v Takaaki Masui and another and other matters* [2022] 1 SLR 1033 ("*Takaaki Masui*") at [91]–[93] are relevant here:

> 91 In our judgment, there are three ways in which the text of s 13(1) of the PCA indicates that the legislative purpose of

> that provision is to prevent corrupt recipients from *retaining* their ill-gotten gains. First, s 13(1) of the PCA only targets the recipient and not the giver in a corrupt transaction, even though both parties would have committed an offence under ss 6(*a*) and 6(*b*) of the PCA respectively. Given that the recipient and the giver are equally culpable in most cases involving a corrupt transaction, the fact that s 13(1) of the PCA is directed solely at the recipient suggests that its underlying rationale is disgorgement, not punishment.
>
> 92 Second, it bears noting that s 13(1) of the PCA only applies where the recipient has actually accepted or obtained gratification. A penalty may only be imposed under s 13(1) of the PCA "[w]here the court convicts any person of an offence *committed by the acceptance of any gratification* in contravention of any provision of [the PCA]" [emphasis added]. In contrast, an agent need not have accepted or obtained gratification for an offence under s 6(a) of the PCA to be made out … This strongly suggests to us that the legislative purpose of s 13(1) of the PCA is the *disgorgement* of corrupt gains and that that provision is *not* intended to provide for an additional layer of punishment.
>
> 93 Third, s 13(1) of the PCA is not framed as a fine. Although s 13(1) of the PCA provides that any penalty imposed thereunder shall be *recoverable* as a fine, it does not provide that an offender who unlawfully accepts any gratification shall be *liable* to pay a fine equivalent to the amount of that gratification. If, however, a recipient who voluntarily returns or surrenders the gratification is subject to a penalty for the full amount of the gratification, as the Prosecution contends, the penalty would effectively act as a *fine* over and above any other sentence that may have been imposed (see *Maruki* ([2] *supra*) at [62(b)]). … In our judgment, it would be grossly unprincipled for s 13(1) of the PCA to punish a recipient who voluntarily returns or surrenders the gratification but not a recipient who does not do so, when it is plainly the former who is less blameworthy (see *Marzuki* at [62(b)]).

51 The court's statements in *Takaaki Masui* accord with the comments made by Mr E.W. Barker during the second reading of the Prevention of Corruption (Amendment) Bill on 22 December 1981, when s 13(2) was introduced into the PCA (Singapore Parl Debates; Vol 41, Sitting No 6; Col 319; 22 December 1981 (E.W. Barker, Minister for Law)):

> Firstly, the Bill will empower a Court to increase in certain circumstances the penalty which may be imposed, in addition

> to any other punishment, on a person who is convicted of any offence of corruptly accepting gratification under the Prevention of Corruption Act. Where a person is charged with a number of offences under the Act, he may be convicted of one or some of the offences and consent to the other outstanding offences being taken into consideration for the purpose of passing sentence. At present, however, the Court can only order a convicted person to pay as an additional penalty a sum equal to the amount or value of the gratification specified in the charges in respect of which he was convicted. The Court has no power to order the convicted person to pay the amount or value of the gratification specified in the other outstanding charges which were taken into consideration for the purpose of sentence. Clause 5 of the Bill amends section 13 of the Act so as to confer such power on the Court.

52 Section 319(1)(*d*)(i) of the CPC, read with ss 5(*a*) and 6(*a*) of the PCA, limits the maximum in-default imprisonment term for one penalty order to 30 months' imprisonment. The aggregate imprisonment term (including in-default imprisonment) is limited to 20 years for an offence under ss 5(*a*) or 6(*a*) of the PCA pursuant to s 319(1)(*e*), read with ss 303 and 306, of the CPC. We set out the relevant parts of these provisions:

> **Sentences**
>
> **303.** —(1) The General Division of the High Court may pass any sentence authorised by law.
>
> (2) Subject to this Code and any other written law, a District Court may pass any of the following sentences:
>
> (a) imprisonment not exceeding 10 years;
>
> (*b*) fine not exceeding $30,000;
>
> (*c*) caning not exceeding 12 strokes;
>
> (*d*) any other lawful sentence, including a combination of the sentences it is authorised by law to pass.
>
> (3) Subject to this Code and any other written law, a Magistrate's Court may pass any of the following sentences:
>
> (*a*) imprisonment not exceeding 3 years;
>
> (*b*) fine not exceeding $10,000;

(*c*) caning not exceeding 6 strokes;

(d) any other lawful sentence, including a combination of the sentences it is authorised by law to pass.

Sentence in case of conviction for several offences at one trial

306. —(1) Where a person is convicted at one trial of any 2 or more distinct offences, the court must sentence the person for those offences to the punishments that it is competent to impose.

(2) Subject to section 307 and subsection (4), where these punishments consist of imprisonment, they are to run consecutively in the order that the court directs, or they may run concurrently if the court so directs.

(3) The court need not send the offender for trial before a higher court merely because the combined punishment for the various offences exceeds the punishment which the court is competent to inflict for a single offence.

(4) Subject to any written law, a Magistrate's Court or District Court may not impose a total term of imprisonment that exceeds twice that which such court is competent to impose under section 303.

Provisions as to sentence of fine

319. —(1) Where any fine is imposed and there is no express provision in the law relating to the fine, the following provisions apply:

…

(*b*) the court which imposed the fine may choose to do all or any of the following things at any time before the fine is paid in full:

…

(v) direct that in default of payment of the fine, the offender must suffer imprisonment for a certain term which must be consecutive with any other imprisonment to which the offender may be sentenced, including any other imprisonment term or terms imposed on the offender under this section in default of payment of fine, or to which the offender may be liable under a commutation of a sentence; …

> (*d*) the term for which the court directs the offender to be imprisoned in default of payment of a fine is to be as follows:
>
> (i) if the offence is punishable with imprisonment for a term of 24 months of more, it must not exceed one half of the maximum term of imprisonment fixed for the offence;
>
> (ii) if the offence is punishable with imprisonment for a term of less than 24 months, it must not exceed one third of the maximum term of imprisonment fixed for the offence;
>
> (iii) if the offence is not punishable with imprisonment, it must be 6 months or less;
>
> (*e*) the imprisonment that is imposed in default of payment of a fine may be additional to the sentence of imprisonment for the maximum term which the court may impose under section 303 provided that the total punishment of imprisonment passed on an offender at one trial does not exceed the limits prescribed by section 306; …

53 As the maximum term of imprisonment for an offence under ss 5(*a*) or 6(*a*) is five years (or 60 months), the maximum term of in-default imprisonment would be one half of this maximum, which is 30 months.

54 If we adopted Mr Chang's interpretation of s 13 of the PCA, there would be only one global penalty order with a maximum in-default imprisonment term of 30 months, whatever the total amount of gratification received by the offender. The result is that the same maximum in-default imprisonment applies whether gratification received was $1m or $15m. This may create a perverse effect of incentivising an offender who received a substantial amount of gratification to opt to serve the in-default imprisonment term rather than disgorge the value of the gratification. Such an interpretation would not accord with the Parliamentary intent in enacting s 13 of the PCA.

55 We also disagreed with Mr Chang's reliance on other statutory provisions that use broadly similar language. Mr Chang referred to s 5 of the POA and ss 305(1) and 359(3) of the CPC. These provisions state:

> [Probation of Offenders Act 1951 (2020 Rev Ed)]
>
> **Probation**
>
> **5.** —(1) Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may, instead of sentencing him, make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer or a volunteer probation officer for a period to be specified in the order of not less than 6 months nor more than 3 years:
>
> …
>
> [Criminal Procedure Code 2010 (2020 Rev Ed)]
>
> **Reformative Training**
>
> **305.** —(1) Where a person is convicted by a court of an offence punishable with imprisonment and that person is, on the day of his or her conviction —
>
> …
>
> the court may impose a sentence of reformative training in lieu of any other sentence if it is satisfied, having regard to his or her character, previous conduct and the circumstances of the offence, that to reform him or her and to prevent crime he or she should undergo a period of training in a reformative training centre.
>
> …
>
> **Order for payment of compensation**
>
> **359.** …
>
> (3) If an accused is acquitted of any charge for any offence, and if it is proved to the satisfaction of the court that the prosecution was frivolous or vexatious, the court may order the prosecution or the complainant or the person on whose information the prosecution was instituted to pay as compensation to the accused a sum not exceeding $10,000.
>
> …

56 Mr Chang submitted that the reference in these provisions to a conviction for an offence or an acquittal for any offence relates to the occasion of conviction or acquittal and not to the individual charges. Similarly, the reference in s 13(1) of the PCA to "convicts any person of an offence" should relate to the occasion of conviction and not mean that a penalty order has to be made for each charge involving gratification that an offender is convicted of.

57 In our view, this argument drew a false equivalence between the cited provisions and s 13(1) of the PCA. Section 5 of the POA and s 305(1) of the CPC provide for alternative sentences. The purpose of both probation and reformative training is to provide for the rehabilitation of young offenders and to reintegrate them back into society: *Public Prosecutor v Koh Wen Jia Boaz* [2016] 1 SLR 334 at [34]–[38]. On the other hand, s 13(1) of the PCA imposes an additional sentence in the form of a penalty order, not with a view to punish but for the purpose of disgorging illicit gains.

58 In respect of s 359(3) of the CPC, there are two preconditions before a court may order the Prosecution to pay compensation: (a) there must be an acquittal of any charge of any offence; and (b) the Prosecution must have been frivolous or vexatious. The court in *Parti Liyani v Public Prosecutor* [2021] 5 SLR 860 ("*Parti Liyani*") at [170] took the tentative view that the plain language of the provision supports the construction that the statutory maximum of $10,000 applies on the occasion of an acquittal regardless of the number of the charges. It can be seen that the amount of compensation that the court may order under s 359(3) of the CPC does not correspond necessarily to the amount of loss or inconvenience resulting to an accused person from frivolous or vexatious prosecution. There is an upper limit of $10,000 although a victim of such

prosecution could conceivably have suffered much more, financially and non-financially. The one-time payment of compensation for wrongful prosecution, no matter the number of charges involved, serves more as a vindication and a mitigation of the loss occasioned. However, the function of s 13(1) of the PCA is disgorgement of illicit gains and provision of disincentives for failure to disgorge.

59 We also could not accept Mr Chang's submissions that s 13(2) of the PCA lends support to the interpretation of s 13(1) as permitting only one global penalty order for multiple charges. His reasoning was that s 13(2) pertains to TIC charges and yet refers only to "the penalty mentioned in subsection (1)" in the singular. However, it is accepted that the singular in a statutory provision generally includes the plural unless the context indicates otherwise. Based on the purpose of s 13 of the PCA and the discussion set out earlier, it was clear to us that s 13(2) does not indicate that s 13(1) allows only one penalty order to be made even if there are more than one charge.

60 The Judge's Third Interpretation, which he adopted, was not consonant with the plain language of s 13(1) of the PCA. It does not show the nexus between the amount of gratification involved and the quantum in the penalty order. Section 13(1) relates the amount in the penalty order to the amount of gratification involved in the offence that the offender is convicted on. It is therefore entirely logical that the singular "offence" and "penalty" in s 13(1) should include the plural so that if there are ten offences involving acceptance of gratification, there should be ten corresponding penalty orders reflecting the respective amounts of gratification.

61 We held that the court must impose a penalty order for each offence involving acceptance of gratification under s 13(1) of the PCA. We therefore answered in the affirmative the Question referred to us as follows:

> Yes, the sentencing judge can and must impose more than one penalty when an accused person has been convicted of two or more offences for the acceptance of gratification in contravention of the PCA.
>
> The judge must impose one penalty for each charge on which the accused person was convicted

Appropriate framework for calibrating in-default imprisonment terms

62 In proposing its framework for calibrating the in-default imprisonment terms, the Prosecution used the daily value in money terms for each day of in-default imprisonment as a starting point. For instance, in a case where the in-default imprisonment term was 100 days and the amount of gratification received was $100,000, the daily value for each day of in-default imprisonment would be $1,000. The Prosecution studied a sample of 45 previous cases involving penalty orders and in-default imprisonment and derived an average daily value of about $1,200.

63 As a working guide and starting point, we adopted the value of $1,000 for each day of in-default imprisonment. This amount of $1,000 bears some correlation to the overall average of $1,200 worked out by the Prosecution and the round figure is easier for the purpose of computation. The result of this simple mathematical exercise could then be enhanced (if the result appears too lenient to incentivise payment of the penalty) or ameliorated (if it appears too harsh in the event of a genuine inability to pay) when the court looks at the overall term of in-default imprisonment on account of the totality principle. Similarly, the final term of in-default imprisonment could be adjusted to comply with the applicable statutory limits.

64 If there are TIC charges (none in the present case), the court may add the penalty for those TIC charges to any of the charges that the Prosecution proceeded with and which the offender was convicted on. This exercise is again subject to the statutory overall limit of 20 years' imprisonment and to the statutory limit of 30 months' imprisonment for each charge. The court may consider the amounts of gratification in the TIC charges globally and add them to any charge that the offender was convicted on. Alternatively, the court may add the amount in one or more TIC charges to one or more charges that the offender was convicted on. The intention in whichever permutation is adopted is that it must fulfil the legislative purpose of causing the disgorgement of all gratifications received corruptly.

65 We now set out the framework for calibrating the period of in-default imprisonment for failure to pay the amount stated in a penalty order in a case with more than one charge involving the receipt of gratification and therefore more than one penalty order:

(a) First, as a starting point, the court calculates the period of in-default imprisonment for non-payment of the amount of gratification in each charge by using the daily value of $1,000 for each day of in-default imprisonment.

(b) Second, the court ensures that the individual in-default imprisonment terms comply with the statutory limitation imposed by s 319(1)(*d*) of the CPC for each charge (*ie*, 30 months' imprisonment).

(c) Third, the court ensures that the aggregate of the in-default imprisonment terms complies with the statutory limitation on the overall imprisonment term at one trial set out in s 319(1)(e), read with ss 303 and 306 of the CPC (*ie*, 20 years' imprisonment for the District Court).

Here, the court has to include the terms of imprisonment already imposed as punishment for the offences.

(d) Fourth, if there are TIC charges involving the receipt of gratification, the court adds the amounts in one or more TIC charges to the amounts in one or more of the charges that the offender was convicted on pursuant to s 13(2) of the PCA. In doing so, the court should add the amounts in the TIC charges to those charges in which the in-default imprisonment terms do not breach the statutory limit of 30 months as stated in (b) above. This enables the court to impose an in-default imprisonment term for the amounts in the TIC charges.

(e) Finally, utilising the totality principle and bearing in mind that in-default imprisonment terms run consecutively, the court considers whether the aggregate of the in-default imprisonment terms will be sufficient to disincentivise the offender from non-payment of the total penalty. Here, the court may refine the in-default imprisonment terms for the individual charges and may consider whether the offender has the financial means to pay the penalty.

66 If part payments are made for the penalty orders, the payments should be applied to the charges in the order that they stand on record. This means that the first payment goes towards the penalty order for the first charge until it is satisfied and the balance is then applied to the penalty order for the second charge and so on.

Issue 2: what the recalibrated in-default imprisonment term should be

67 In the light of our answer to the Question and using the framework set out above, we recalibrated the in-default imprisonment term in the following manner.

68 First, we calculated the tentative in-default imprisonment term for each of the 19 charges that Mr Chang was convicted on using the daily value of $1,000. The tentative number of days of in-default imprisonment for each charge is set out in the right column below:

Charge	**Amount of gratification/penalty**	**Tentative in-default imprisonment (in days)**
1	473,310	473
2	556,290	556
3	461,820	461
4	153,040	153
5	151,630	151
6	535,290	535
7	302,940	302
8	295,700	295
9	288,520	288
10	210,750	210
11	272,320	272
12	282,080	282
13	296,200	296
14	305,820	305

15	227,130	227
16	147,360	147
17	433,950	433
18	278,740	278
19	204,705	204
Global tentative in-default imprisonment		5,868 days (about 196 months)

69 In our oral judgment in court, we used the global amount of gratification of $5,877,595 to arrive at a tentative 5,877 days of in-default imprisonment. As will become apparent, the difference of nine days between this and the figure above of 5,868 days is inconsequential.

70 There were no TIC charges in this case. None of the tentative in-default imprisonment terms in the 19 charges exceeded the maximum in-default imprisonment term of 30 months (or 900 days) for each charge: see s 319(1)(*d*) of the CPC.

71 The statutory limit on the maximum sentence is 20 years' or 240 months' imprisonment. The Judge imposed a total of 80 months' imprisonment and that was not the subject of this reference to the Court of Appeal. This meant that the total in-default imprisonment term here was limited to 160 months (240 months minus 80 months). The tentative aggregate in-default imprisonment term of 196 months exceeded this limit by 36 months.

72 Looking at the totality of the circumstances, including the fact that Mr Chang had the financial means to disgorge the entire amount in the penalty orders, we decided to deduct four months in-default imprisonment for each of the 19 charges. An aggregate of 76 months (*ie*, 19 charges multiplied by four

months) was therefore deducted from the tentative total of 196 months, giving a final total of 120 months of in-default imprisonment for the 19 charges. We considered 120 months to be the appropriate term to disincentivise non-payment of the 19 penalty orders. The aggregate in-default imprisonment term of 2,129 days (or about 70.96 months) ordered by the Judge was set aside accordingly.

Issue 3: whether the doctrine of prospective overruling should apply

Applicable law

73 The doctrine of prospective overruling applies only in an exceptional case: *Adri Anton Kalangie v Public Prosecutor* [2018] 2 SLR 557 ("*Adri Anton Kalangie*") at [39]–[40]. The principles to determine whether the doctrine of prospective overruling applies were summarised by the Court of Appeal in *Adri Anton Kalangie* at [70]:

> (a) In determining whether the doctrine should be invoked, the central inquiry is whether the departure from the ordinary retroactivity of the judgment is necessary to avoid serious and demonstrable injustice to the parties at hand or to the administration of justice. In this regard, the following factors identified in *Public Prosecutor v Hue An Li* [2014] 4 SLR 661 ("*Hue An Li*") at [124] are relevant:
>
> > (i) the extent to which the pre-existing legal principle or position was entrenched;
> >
> > (ii) the extent of the change to the legal principle;
> >
> > (iii) the extent to which the change in the legal principle was foreseeable; and
> >
> > (iv) the extent of reliance on the legal principle.

No one factor is preponderant over any other, and no one factor is necessary before the doctrine can be invoked in a particular case.

(b) The onus of establishing that there are grounds to exercise such discretion and limit the retroactive effect of a judgment is ordinarily on whoever seeks the court's exercise of that discretion.

(c) If the doctrine of prospective overruling is invoked, this should be explicitly stated and the precise effect of the doctrine should, if appropriate, be explained. As a general rule, judicial pronouncements are presumed to be retroactive in effect until and unless expressly stated or plainly indicated otherwise.

74 In *Hue An Li*, the Court of Appeal elaborated on the four factors as follows (*Hue An Li* at [124]):

> (a) The extent to which the law or legal principle concerned is entrenched: The more entrenched a law or legal principle is, the greater the need for any overruling of that law or legal principle to be prospective. This will be measured by, amongst other things, the position of the courts in the hierarchy that have adopted the law or legal principle that is to be overruled and the number of cases which have followed it. A pronouncement by our Court of Appeal which exhaustively analyses several disparate positions before coming to a single position on a point of law will be more entrenched than a passing pronouncement on that same point of law by a first-instance court. Similarly, a law or legal principle cited in a long line of cases is more entrenched than one cited in a smaller number of cases.
>
> (b) The extent of the change to the law: The greater the change to the law, the greater the need for prospective overruling. A wholesale revolutionary abandonment of a legal position (as was done in, for instance, *Manogaran* ([110] supra)) is a greater change than an evolutionary reframing of the law (see, for instance, *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193, which re-examined the distinction between interpretation and implication in contract law, but by and large built on the foundations laid down by prior cases).

> (c) The extent to which the change to the law is foreseeable: The less foreseeable the change to the law, the greater the need for prospective overruling. In *SW v UK* ([113] supra), for example, the abolition of the doctrine of marital immunity was eminently foreseeable because of past judicial pronouncements which had expressed distaste for the doctrine and progressively expanded the exceptions to it. There was therefore no need to curtail the retroactive application of the change in the legal position.
>
> (d) The extent of reliance on the law or legal principle concerned: The greater the reliance on the law or legal principle being overruled, the greater the need for prospective overruling. This factor is particularly compelling in the criminal law context, where a person's physical liberty is potentially at stake. Quite apart from Art 11(1) of the Singapore Constitution, a person who conducts his affairs in reliance on the ostensible legality of his actions would be unfairly taken by surprise if a retrospective change to the law were to expose him to criminal liability.
>
> [emphasis in original]

75 Mr Chang's case plainly did not satisfy the four factors. Contrary to Mr Chang's submissions, it could not be said that adopting the Prosecution's Interpretation would have been an unforeseeable and radical change of a deeply entrenched legal principle that would cause serious or demonstrable injustice. Mr Chang submitted that among all the reported decisions in the past 50 years involving a penalty order, there have only been six cases where the court imposed more than one penalty order and that there was a consistent judicial practice of imposing a single penalty order even where offenders were convicted of multiple charges.

76 The number of penalty orders imposed on an offender does not affect the aggregate amount of gratification being disgorged through those penalties. If the offender receives gratifications, the law already provides that he will have to disgorge the full amount to the state upon conviction. This case merely changed the aggregate in-default imprisonment term, which only applies to the extent that Mr Chang fails to pay the penalty. Here, it was undisputed that Mr

Chang had the means to pay the aggregate amount of the penalty orders. Therefore, there was no serious or demonstrable injustice shown which would justify the application of the doctrine of prospective overruling.

Amalgamated charges

77 The issue of amalgamated charges did not arise for decision in this case. Pursuant to s 124(8) of the CPC, where a person is convicted on an amalgamated charge, the court may sentence that person to two times the amount of punishment to which that person would otherwise have been liable if that person had been charged with and convicted on any one of the incidents of commission of the offence.

78 In our opinion, it is clear that the enhanced maximum punishment provision in s 124(8) cannot apply to s 13(1) of the PCA and does not entitle the court to make a penalty order for twice the amount of gratification received by the offender. An amalgamated charge merely consolidates the amounts of gratification accepted over a specified period of time. A penalty order in an amalgamated charge is for the purpose of disgorging the consolidated amounts of gratification, not more, not less. It is not meant to perform the function of a fine and therefore the amount in a penalty order cannot be double that of the gratification accepted. This is notwithstanding the fact that s 13(1) also provides that a penalty order shall be recoverable as a fine.

Conclusion

79 For the reasons set out above, we answered the Question in the affirmative:

> Yes, the sentencing judge can and must impose more than one penalty when an accused person has been convicted of two or

> more offences for the acceptance of gratification in contravention of the PCA.
>
> The judge must impose one penalty for each charge on which the accused person was convicted.

80 Mr Chang's conviction on the 19 charges and his sentence of 80 months' imprisonment continued to stand. There were 19 penalty orders issued, each matching the value of gratification stated in each charge. The total amount of the penalty orders was $5,877,595 with an aggregate in-default imprisonment term of 120 months.

81 We also ordered that if part payments are made, the payments would be applied to the charges in the order that they stand on record with the first payment applied to the penalty order for the first charge until it is satisfied and the balance applied to the penalty order for the second charge and so on in sequence.

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

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