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

[2025] SGHC 101

Magistrate's Appeal No 9040 of 2024/01

Between

Public Prosecutor

… *Appellant*

And

China Railway Tunnel Group
Co. Ltd (Singapore Branch)

… *Respondent*

JUDGMENT

[Criminal Law — Offences — Corruption]

CONTENTS

INTRODUCTION **1**

THE CHARGES **2**

BACKGROUND FACTS **4**

THE DJ'S DECISION **8**

THE APPEAL TO THE GENERAL DIVISION OF THE HIGH COURT **10**

THE PARTIES' SUBMISSIONS ON THE APPROPRIATE LEGAL APPROACH **12**

THE YIC'S CASE 12

THE PROSECUTION'S CASE 13

THE RESPONDENT'S CASE 14

THE PARTIES' CASES ON THE DJ'S APPLICATION OF THE *TOM-RECK* TEST **15**

WHETHER XI WAS THE "LIVING EMBODIMENT" OF THE RESPONDENT 15

The Prosecution's case *15*

The respondent's case *16*

WHETHER XI'S ACTS WERE WITHIN THE SCOPE OF A FUNCTION OF MANAGEMENT PROPERLY DELEGATED TO HIM 16

The Prosecution's case *16*

The respondent's case *17*

ISSUES BEFORE THE COURT **17**

THE LAW OF CORPORATE ATTRIBUTION IN THE CRIMINAL CONTEXT **18**

THE PRIMARY RULES OF ATTRIBUTION AND THE IDENTIFICATION DOCTRINE....18

THE GENERAL RULES OF ATTRIBUTION....21

THE SPECIAL RULES OF ATTRIBUTION....21

THE APPROPRIATE APPROACH TO CORPORATE ATTRIBUTION IN THE CRIMINAL AND REGULATORY CONTEXT....26

THE APPEAL ON THE FACTS....28

INSUFFICIENT EVIDENCE OF TACIT APPROVAL BY LIU....30

AGGREGATION....33

CONCLUSION....33

ANNEX 1: THE RESPONDENT'S ORGANISATIONAL CHART....35

Public Prosecutor
v
China Railway Tunnel Group Co Ltd (Singapore Branch)

[2025] SGHC 101

General Division of the High Court — Magistrate's Appeal No 9040 of 2024/01
Sundaresh Menon CJ, Tay Yong Kwang JCA and Andrew Phang SJ
19 February 2025

29 May 2025 Judgment reserved.

Tay Yong Kwang JCA (delivering the judgment of the court):

Introduction

1 This is the Prosecution's appeal against the acquittal of the respondent, a foreign company, on three charges under s 6(*b*) read with s 7 of the Prevention of Corruption Act (Chapter 241, 1993 Rev Ed) ("PCA"). The charges concerned the corrupt giving of gratification in the form of three loans amounting to $220,000 by two of the respondent's employees to Mr Henry Foo Yung Thye ("Foo"), who was an employee of the Land Transport Authority of Singapore ("LTA"). One of the respondent's employees, Mr Xi Zhengbing ("Xi"), was the general manager and head representative of the respondent's Singapore branch.

2 In *Public Prosecutor v China Railway Tunnel Group Co. Ltd* [2024] SGDC 128 ("Grounds of Decision"), the District Judge ("DJ") acquitted the respondent on the ground that Xi's acts and knowledge could not be attributed

to the respondent. The appeal before us therefore centred on the question of what the appropriate test for corporate attribution in the criminal context is.

3 A Young Independent Counsel, Mr Nguyen Vu Lan (the "YIC"), was appointed to address us on the principles governing attribution of criminal liability to a company. In particular, the YIC was asked to consider whether the test set out in *Tom-Reck Security Services Pte Ltd v PP* [2001] 1 SLR(R) 327 ("*Tom-Reck*") ought to be reconsidered or modified in view of the Privy Council's decision in *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 ("*Meridian*").

4 After hearing the parties' and the YIC's submissions, we reserved judgment. We now dismiss the Prosecution's appeal. In summary, we affirm that the *Tom-Reck* test should remain the operative test for attribution of criminal liability to a company. However, in certain circumstances, it may be appropriate for the court to apply a special rule of attribution based on the *Meridian* approach.

The charges

5 The Prosecution preferred the following three charges against the respondent:

> **DSC 900633-2020 [First Charge]**
>
> You, [China Railway Tunnel Group Co. Ltd. (Singapore Branch)] are charged that you, on or about 5 January 2018, in Singapore, did corruptly give a gratification in the form of a loan amounting to $100,000 to an agent, *namely*, one Foo Yung Thye Henry ("Foo"), a Deputy Group Director in the employ of the Land Transport Authority ("LTA"), as an inducement for doing an act in relation to Foo's principal's affairs, *to wit*, advancing your business interests with the LTA in relation to existing LTA contracts or future proposals for LTA contracts, and you have

thereby committed an offence punishable under Section 6(b) read with Section 7 of the Prevention of Corruption Act, Chapter 241.

DSC 900634-2020 [Second Charge]

You, [China Railway Tunnel Group Co. Ltd. (Singapore Branch)] are charged that you, on or about 31 January 2018, in Singapore, did corruptly give a gratification in the form of a loan amounting to $100,000 to an agent, namely, one Foo Yung Thye Henry ("**Foo**"), a Deputy Group Director in the employ of the Land Transport Authority ("**LTA**"), as an inducement for doing an act in relation to Foo's principal's affairs, *to wit*, advancing your business interests with the LTA in relation to existing LTA contracts or future proposals for LTA contracts, and you have thereby committed an offence punishable under Section 6(b) read with Section 7 of the Prevention of Corruption Act, Chapter 241.

DSC-900635-2020 [Third Charge]

You, China Railway Tunnel Group Co. Ltd. (Singapore Branch)], are charged that you, sometime in July or August 2019, in Singapore, did corruptly give a gratification in the form of a loan amounting to $20,000 to an agent, namely, one Foo Yung Thye Henry ("Foo"), a Deputy Group Director in the employ of the Land Transport Authority ("LTA"), as an inducement for doing an act in relation to Foo's principal's affairs, *to wit*, advancing your business interests with the LTA in relation to existing LTA contracts or future proposals for LTA contracts, and you have thereby committed an offence punishable under Section 6(b) read with Section 7 of the Prevention of Corruption Act, Chapter 241.

6 Section 6(*b*) of the PCA reads as follows:

Punishment for corrupt transactions with agents

6. If —

…

(*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
>
> …
>
> 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.

7 Section 7 of the PCA provides:

> **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.

Background facts

8 The respondent is a foreign company with its headquarters in the People's Republic of China ("China"). It has a total of 24 branches, eight of which are overseas branches. The overseas branches came under the purview of the respondent's overseas department ("Overseas Department"). The full organisational chart is set out in **Annex 1** at the end of this judgment.

9 The respondent is registered as a foreign company in Singapore pursuant to ss 4(1) and 368 of the Companies Act 1967 (2020 Rev Ed). It carries on business in Singapore through its Singapore branch (the "Singapore Branch"). At the trial in the District Court, the Prosecution confirmed that the charges were against the respondent and that the Singapore Branch was not a separate legal entity.

10 At all material times, the respondent was engaged by the LTA in three different projects:

(a) on 22 December 2014, it was engaged as a sub-contractor for LTA project T216 on the Thomson-East Coast Line ("TEL");

(b) on 15 December 2015, it was engaged as a sub-contractor for LTA project T221 on the TEL;

(c) on 9 October 2017, it was awarded the main contract for LTA project C885 on the Circle Line.

11 During this period of time, Foo was a project director in TEL Civil Team 3. In this capacity, he was involved in the tender process and subsequent project management of the main contractors in respect of projects T216 and T221. Sometime around July 2017, he concurrently became the deputy group director of the TEL and Cross Island Lines. However, Foo was not involved in project C885.

12 In this case, four of the respondent's employees were involved or alleged to be involved in the corrupt giving of gratification to Foo. These employees and their appointments are set out in the following table:

Name	Appointment	Role in Project T216	Role in Project T221	Role in Project C885
Xi Zhengbing ("Xi")	General manager of the Singapore Branch	NA	NA	Project director
Li Yaohuan ("Li")	Deputy general manager of the Singapore Branch	NA	Project director/ project manager	Deputy project director

Zhou Zhenghe ("Zhou")	Deputy general manager of the Singapore Branch	Project director	Commercial manager	Deputy project director
Liu Chenyu ("Liu")	Deputy general manager/ General manager of the respondent's Overseas Department	NA		

13 Foo had encountered financial difficulties due to gambling. Sometime in October 2016, Foo allegedly reached out to Li. Li then informed Xi, who was his superior, via WeChat that Foo had asked for help in "solv[ing] his personal debts", in return for Foo influencing an ongoing issue concerning the ownership of certain machinery as well as causing the LTA to forbear from deducting certain costs from what the respondent was owed for its work done. Xi and Li discussed Foo's offer, with Xi sending a message saying that "if [Foo] can give us the next project, we can help him out".

14 It is also alleged by the Prosecution that this offer made by Foo was subsequently communicated to Liu, who was then the deputy general manager of the respondent's Overseas Department. The Overseas Department was in charge of all the respondent's overseas branches (see the respondent's organisation chart at Annex 1). Liu allegedly gave approval for the financial help to be given to Foo.

15 On 22 October 2016, Li sent Foo a Whatsapp message, saying that Liu was grateful for Foo's support and was willing to help him out of his trouble. However, as will be discussed below, there was no direct evidence from Liu or Xi at the trial or any evidence of messages sent by Liu. In any case, it was not contended by the Prosecution that any loan was given to Foo because of his alleged request around October 2016 and it was also not the Prosecution's case

that Liu was involved with the gratifications that were given to Foo subsequently.

16 In or around late 2017 or January 2018, Foo asked Xi for a loan. Xi agreed in the hope that Foo would "refer more job opportunities like T221 and T216 to [the respondent]".

17 On Xi's instructions, Zhou devised an illicit plan to obtain the necessary funds. Zhou arranged for Chen Xu Gang, a director of Tong Sheng Construction & Trading Pte Ltd ("Tong Sheng"), to issue false invoices for work done for project C885 to the respondent. Additionally, Zhou prepared supporting documents including two payment application forms, each containing two forged signatures (that of a quantity surveyor and contracts manager employed by the Singapore Branch). Xi signed on these payment application forms.

18 The false invoices were presented together with the supporting documents to the respondent's finance department to process payment. The respondent's finance department disbursed payment to Tong Sheng. Chen Xu Gang then passed the money to Zhou after deducting an amount for the goods and services tax. On or about 5 and 31 January 2018, Xi and Zhou passed $200,000 to Foo in two tranches of $100,000 each.

19 In 2019, Foo asked Xi for another loan. Xi agreed in the hope that Foo would expedite the respondent's final payment claims in projects T221 and T216 as well as help the respondent to win the tender for LTA project T316, a project for construction works at Changi airport. On Xi's instructions, Zhou borrowed $20,000 from a personal acquaintance and passed the money to Foo sometime in July or August 2019.

20 In September 2019, Xi and Zhou were arrested by the Corrupt Practices Investigation Bureau. After being released on bail, they absconded to China. There, they were arrested and convicted subsequently by the Guangzhou Intermediate People's Court for the offence of bribing a foreign government official.

The DJ's decision

21 The DJ applied the test for corporate attribution set out by the High Court in *Tom-Reck*. This test comprises two disjunctive limbs under which the acts and knowledge of a director or employee can be attributed to the company for the purpose of imposing corporate criminal liability if (*Tom-Reck* at [17]):

> (a) the person with the guilty knowledge or who performed the guilty act may be regarded as the "embodiment of the company"; or
>
> (b) the person with the guilty knowledge or who performed the guilty act is merely "the company's servant", but the person's acts are within the scope of a function of management properly delegated to him.
>
> (collectively referred to hereinafter as the "*Tom-Reck* test")

22 Before going into the DJ's substantive analysis, we note three preliminary points. First, as the DJ observed, the entity charged was the respondent as a corporate entity with its headquarters in China and registered as a foreign company in Singapore. The charges were not preferred against the Singapore Branch as it was not a separate legal entity (Grounds of Decision at [8]–[9]). Second, the Prosecution had confirmed at the trial that its case on corporate attribution was based entirely on the roles and actions of Xi and not Zhou. Third, the DJ noted that the commission of the offences of corruption by

Xi and Zhou were proved beyond reasonable doubt (Grounds of Decision at [23] and [25]).

23 Turning to the first limb of the *Tom-Reck* test, the DJ found that Xi was not the living embodiment of the respondent. Although Xi could have been said to be the living embodiment of the Singapore Branch, the Singapore Branch was only one sub-department (among all the overseas branches) within the respondent's Overseas Department, which was in turn only one department in the respondent's corporate structure. Additionally, Xi was neither a director on the respondent's board of directors nor a member of the respondent's senior management. He did not have a sufficiently high level in the respondent's chain of command (Grounds of Decision at [30]–[35]).

24 As for the second limb of the *Tom-Reck* test, the DJ held that Xi's corrupt acts were not performed within the scope of a properly delegated function of management. The corrupt acts were in the form of loans given as gratification. The respondent did not delegate any responsibility to Xi or to Zhou to give loans to people having business dealings with the respondent. To the contrary, the extent to which Xi and Zhou had colluded with Chen Xu Gang to procure payment from the respondent based on false invoices showed that Xi and Zhou knew that the respondent would not have approved the loans. Zhou even had to resort to borrowing money from his friend in order to give the $20,000 loan to Foo. The respondent did not approve or condone their corrupt acts. Xi's acts were therefore outside the scope of his authority and not within the scope of a properly delegated management function (Grounds of Decision at [38]–[43]).

The appeal to the General Division of the High Court

25 Dissatisfied with the DJ's decision, the Prosecution appealed on the basis that the DJ erred in his application of both limbs of the *Tom-Reck* test as well as in his finding of fact that the respondent did not condone Xi's corrupt acts. The Prosecution's petition of appeal did not take issue with the *Tom-Reck* test as a matter of law.

26 For the purpose of considering the proper approach to attribution of criminal liability to a company, we directed the YIC and the parties in the appeal to submit on the following questions:

> What are the principles governing the attribution of criminal liability to a company for acts done by its associated person(s)? Without limiting the generality of the question, please consider:
>
> (a) Whether the approach taken in *Tom-Reck Security Services Pte Ltd v Public Prosecutor* [2001] 1 SLR(R) 327 ("*Tom-Reck*") should be reconsidered or modified in view of the Privy Council's decision in *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 PC ("*Meridian*").
>
> (b) How should the principles apply where more than one associated person of the company was involved in the commission of the acts constituting the offence.
>
> (c) How the principles apply in the context of an offence under s 6(*b*) of the Prevention of Corruption Act 1960.

27 The *Tom-Reck* test was adopted from the UK House of Lords' decision in *Tesco Supermarkets v Nattrass* [1972] AC 153 ("*Tesco v Nattrass*") and has come to be known as the identification doctrine or the "directing mind and will" test. It has been acknowledged in the civil context that the term "directing mind and will" is "but a convenient label for the persons whose knowledge or acts should be attributed to the company for the purpose of applying that legal rule": see *Ho Kang Peng v Scintronix Corp Ltd (formerly known as TTL Holdings Ltd)*

[2014] 3 SLR 329 ("*Scintronix*") at [50]. Substantively speaking, a person is viewed as the directing mind and will of a company for the purpose of imposing criminal liability by way of corporate attribution where that person satisfies either of the two limbs of the *Tom-Reck* test, namely, that the person is either the living embodiment of the company or if that person's acts are performed as part of a delegated function of management.

28 The Privy Council took a modified approach to corporate attribution in *Meridian* (the "*Meridian* approach"). *Meridian* arose from an appeal against the New Zealand Court of Appeal's decision to attribute a certain employee's knowledge to the appellant company in order to impose liability on the company for breaching certain notice requirements under New Zealand's Securities Amendment Act 1988. In dismissing the appeal, Lord Hoffmann discussed three rules of attribution. These rules have since been adopted by the Court of Appeal in *Scintronix,* which set them out as follows (at [48]):

> First, the company's "primary rules of attribution" found in the company's constitution or in company law, and which vest certain powers in bodies such as the board of directors or the shareholders acting as a whole (*ie*, the unanimous consent rule). Secondly, general rules of attribution (which are equally available to natural persons), comprising the principles of agency which allow for liability in contract for the acts done by other persons within their actual or ostensible scope of authority, and vicarious liability in tort. Thirdly, "special rules of attribution" fashioned by the court in situations where a "rule of law, either expressly or by implication, excludes the attribution on the basis of the general principles of agency or vicarious liability", an example being where a rule requires

> some act or state of mind on the part of the person *himself* as opposed to his servants or agents (see *Meridian* at 507).
>
> [emphasis in original]

The parties' submissions on the appropriate legal approach

The YIC's case

29 The YIC submits that the approach in *Meridian* should replace the *Tom-Reck* test for the purpose of imposing criminal liability by way of corporate attribution. His reasons are summarised as follows:

(a) that the *Meridian* approach moves the attribution analysis away from the anthropomorphism that underpins the directing mind and will doctrine;

(b) the *Meridian* approach allows for a context-sensitive approach to attribution and ensures the purpose of the legislation is not defeated;

(c) the *Meridian* approach allows for more flexibility in accommodating modern corporate practice in large companies with complex, decentralised systems of management, where individuals making decisions or controlling affairs may be low in the company hierarchy or have not been delegated functions of management. In this regard, the "directing mind and will" approach has been criticised for allowing large companies to escape criminal liability more easily than smaller companies;

(d) the *Meridian* approach is more consistent with Singapore's broadening stance against corporate criminal liability as evidenced by other local legislation providing for more expansive bases of attribution;

(e) the *Meridian* approach is more doctrinally coherent than the directing mind and will doctrine; and

(f) any increase in uncertainty that the *Meridian* approach may give rise to can be addressed adequately since the courts are well-equipped to interpret and construe legislation.

30 If the *Meridian* approach applies, the YIC submits that a special rule of attribution needs to be fashioned for the purposes of imposing corporate criminal liability under s 6(*b*) of the PCA. The YIC's proposed rule is that criminal liability should be established by way of attribution of the acts and mental states of the company's employee(s) who, with the authority of the company, deal directly with the agent.

The Prosecution's case

31 The Prosecution endorses the YIC's recommendation to adopt the *Meridian* approach and echoes the YIC's reasoning that the *Meridian* approach is more consistent with modern corporate practice and would better give effect to the general legislative purpose undergirding the PCA. The Prosecution also highlights that adopting the *Meridian* approach would allow for consistency between the approaches to corporate attribution in the criminal and civil context.

32 The Prosecution agrees with the YIC's suggested rule of attribution (at [30] above). To address any concerns of overreach, the Prosecution also submits that certain common law exceptions to the special rule should apply. These include (a) the breach of duty exception, also known as the principle in *In re Hampshire Land Company* [1896] 2 Ch 743 ("*Re Hampshire Land*") and (b) a reasonable practicability exception to prevent attribution where the company

has taken all reasonably practicable steps to prevent employees from carrying out corrupt acts.

The respondent's case

33 The respondent submits that the *Tom-Reck* test should continue to apply for the following reasons:

(a) there is nothing inherently unfair and unjust with large companies having multiple layers of decision-making as that is a natural consequence of corporate growth. Further, the *Tom-Reck* test already considers whether the company implemented measures to prevent criminal conduct or simply turned a blind eye to such activities.

(b) the fact that Parliament has introduced other legislative provisions with more expansive bases of attribution does not indicate that a broader approach ought to apply to other criminal statutes such as the PCA. Parliament would have amended the PCA to expand the rules of attribution if it had intended to prosecute more corporate bodies under the PCA.

(c) the *Meridian* approach would lead to significant uncertainty as there is no clear guidance on how special rules of attribution ought to be fashioned. This is especially undesirable in the criminal context.

(d) the *Meridian* approach could result in the ambit of attribution becoming far too wide and that would apply an unrealistic and impossible standard to companies.

(e) the second disjunctive limb of the *Tom-Reck* test, namely, whether the act falls within the scope of a delegated function of management, addresses adequately cases where the individual wrongdoer is not a high-level executive.

The parties' cases on the DJ's application of the *Tom-Reck* test

Whether Xi was the "living embodiment" of the respondent

The Prosecution's case

34 Assuming that the *Tom-Reck* test is still the applicable legal test, the Prosecution submits that the DJ erred in its application. First, the DJ erred in law in finding that Xi was not the living embodiment of the respondent in committing the offences. This is because, according to Lord Reid's holding in *Tesco v Nattrass* which was cited in *Tom-Reck* at [17], the relevant individual only needs to be the living embodiment of the company in "the appropriate sphere". In other words, the individual does not need to be the living embodiment of the company as a whole. Accordingly, the Prosecution submits that attribution is permitted where the individual employee was an embodiment of the company "within his appropriate sphere" of responsibility.

35 In the instant case, the "appropriate sphere" of Xi's responsibility ought to include the respondent's Singapore operations and the respondent's tenders for Singapore projects. The commission of the PCA offences fell within Xi's appropriate sphere of responsibility.

The respondent's case

36 The respondent reiterates its arguments made at the trial. Xi was far removed from the Chinese headquarters of the respondent, did not have any management functions and there were strict and extensive reporting lines within the respondent such that the Singapore Branch had to report upwards through multiple chains of command. Further, Xi's authority was restricted since he had reporting obligations to his superiors in the Overseas Department, had no blanket authority to make corporate decisions and was subject to formal written regulations regarding the tender process. Xi was not allowed to misappropriate company funds or give loans to third parties and policies providing for the decentralisation of decision-making powers required Xi to consult and be assisted by various deputies before arriving at a final decision. Accordingly, Xi could not be regarded as the living embodiment of the respondent.

Whether Xi's acts were within the scope of a function of management properly delegated to him

The Prosecution's case

37 The Prosecution argues that the District Judge erred in law and in fact in holding that Xi was not performing a function of management delegated to him by the respondent. The Prosecution submits that the DJ erred in reasoning that the respondent must delegate specifically to Xi the function of giving loans to Foo. The relevant inquiry ought to have been whether a legitimate management function was delegated to Xi. The Prosecution submits that the respondent delegated the following management functions to Xi: (a) the resolution of operational problems faced by the respondent in Singapore and (b) the management of the respondent's tenders in Singapore. Xi's giving of corrupt gratification fell within the scope of these delegated management functions.

Alternatively, the Prosecution submits that under the respondent's broader system of controls, its anti-corruption policy and systems were inadequate and were not enforced.

The respondent's case

38 The respondent reiterates that Xi's corrupt acts were not within the scope of a properly delegated function of management. Xi and Zhou had to go to great lengths to circumvent the respondent's checks and balances in order to obtain funds for the loans and they knew that such actions contravened the respondent's policies and systems. The power of attorney issued to Xi by the respondent in respect of project C885 explicitly excluded from Xi's scope of authority any powers of entering into financial contracts or agreements which would impose liabilities for debt on the respondent, thus limiting the scope of the functions that were delegated to him.

Issues before the court

39 The following issues arise for our consideration in this appeal:

(a) whether the *Tom-Reck* test ought to be reconsidered or modified in view of the approach in *Meridian*; and

(b) depending on the test adopted, whether Xi's acts and knowledge ought to be attributed to the respondent for the purpose of imposing criminal liability for the offences under s 6(*b*) of the PCA.

The law of corporate attribution in the criminal context

The primary rules of attribution and the identification doctrine

40 We make some observations on the rules of attribution propounded by Lord Hoffman. As mentioned earlier, the primary rules of attribution are rules found in the company's constitution or in company law that vest certain powers in bodies such as the board of directors or the shareholders acting as a whole. However, it is highly unlikely that a company's constitution, board of directors or shareholders will authorise an illegal act expressly.

41 The solution may be to permit attribution on the basis that the individual wrongdoer was acting "within his appropriate sphere". We set out below the views of Lord Reid in *Tesco v Nattrass* which were affirmed in *Tom-Reck* at [15]:

> On the question of the criminal liability of a corporate entity, and specifically whether the employee's acts could be attributed to the company, Lord Reid expressed the view that:
>
> > A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these; it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind, then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company's servant or agent. In that case any liability of the company can only be a statutory or vicarious liability.

42 There are attractions to attribution of culpability where the wrongdoer has acted within his "appropriate sphere". In this context, the identification of the person who has management and control of the company is done with reference to the specific act or omission in question. This rule of attribution examines whether the individual wrongdoer's illegal act was committed within his appropriate sphere of duty or authority and whether the nexus between the illegal act and the scope of duty or authority is strong enough to warrant the attribution of criminal liability to the company.

43 The Prosecution referred to the Supreme Court of Canada's decision in *R v Canadian Dredge & Dock Co* [1985] 1 SCR 662 ("*Canadian Dredge*") which applied a similar test of attribution that examined the strength of the connection between the individual wrongdoer's scope of authority and the relevant illegal acts (at [21]):

> The essence of the test is that the identity of the directing mind and the company coincide so long as the actions of the former are performed by the manager within the sector of corporation operation assigned to him by the corporation. The sector may be functional, or geographic, or may embrace the entire undertaking of the corporation. The requirement is better stated when it is said that the act in question must be done by the directing force of the company when carrying out his assigned function in the corporation.

44 The above holding is largely in line with the tests formulated in *Tesco v Nattrass* and *Tom-Reck.* However, the court in *Canadian Dredge* also held that the presence of general or specific instructions prohibiting the conduct in question was irrelevant in determining the parameters of the identification doctrine (at [43]). The court further held that the identification doctrine only operates where the prosecution demonstrates that the action taken by the employee (a) was within the field of operation assigned to him; (b) was not

totally in fraud of the corporation; and (c) was by design or result partly for the benefit of the company. Where the employee's criminal act was totally in fraud of the corporate employer and where the act was intended to and did result in benefit exclusively to the employee in question, the employee's directing mind, from the outset of the design and execution of the criminal plan, ceased to be a directing mind of the corporation. Consequently, the employee's acts could not be attributed to the corporation under the identification doctrine (at [66]).

45 The above formulation of the scope of the identification doctrine in *Canadian Dredge* may be too broad and could ensnare companies which have taken all reasonable precautions to prevent the illegal acts in question. It would result in the attribution of culpability to the company although it has expressly forbidden the employee's illegal act and has not done anything to condone it.

46 In the present case, the respondent's Employee Code of Conduct for Overseas Companies issued in 2015, the Notice on Risk Prevention and Measures for Overseas Business issued in 2018 and the Notice on the Implementation of Self-Inspection on the Business Behaviours of Overseas Offices and Personnel issued in 2016 all expressly identified and forbade corruption and bribery by its employees. The *Canadian Dredge* approach would require the court to disregard these company directives as being irrelevant when determining whether Xi's corrupt giving of loans could be attributed to the respondent. Further, so long as Xi's illegal acts resulted in some benefit to the respondent, culpability would be attributed to the respondent. Such benefit could conceivably include non-monetary matters like quicker processing of claims or less strict supervision of work. Attribution of culpability to a company in such circumstances appears to be overly harsh.

The general rules of attribution

47 The general rules of attribution allow for liability to be imputed to a company for the acts done by its agents or employees within their actual or ostensible scope of authority. In respect of actual authority, there can be no objection to the agent's or employee's acts and knowledge being attributed to the company for the purposes of imputing criminal liability. However, as mentioned above, it is highly unlikely that a company would authorise its agents or employees to commit illegal acts.

48 The doctrine of ostensible or apparent authority was developed in the commercial context to bind a principal where the person purporting to act as an agent did not at the outset have the authority to do so. The commercial considerations underpinning the doctrine of apparent authority have been set out in Tan Cheng Han SC, *The Law of Agency* (Academy Publishing, 2nd Ed, 2017) at para 5.003. The doctrine developed from the perspective of injustice to third parties who deal with the company-principal in circumstances where they think reasonably that the person they are dealing with is authorised to bind the company. However, this consideration is not applicable to the situation of imposing criminal liability on the company because it does not depend on whether some third party was affected unfairly. Instead, the focus is on whether it is just to hold the company criminally liable for the acts of its agents or employees.

The special rules of attribution

49 Special rules of attribution may be applied in situations where a rule of law, either expressly or by implication, excludes attribution on the basis of the general principles of agency or vicarious liability. Such rules appear in *Meridian*

to be exclusionary provisions where, for some reason under the relevant criminal law, it is inappropriate to attribute criminal liability to the principal because that law requires some act or state of mind on the part of the principal itself as opposed to its servants or agents: see, generally, *Meridian* at 507. Accordingly, courts applying the *Meridian* approach in subsequent cases have crafted special rules of attribution, bearing in mind the policy and the purpose of the law in question so as not to nullify that law.

50 However, the creation of special rules of attribution can give rise to uncertainty: see Eilis Ferran, *Corporate Attribution and the Directing Mind and Will* (2011) Vol 127 LQR 239 at 250; see also Meaghan Wilkinson, *Corporate Criminal Liability – The Move Towards Recognising Genuine Corporate Fault* (2003) 9 Canterbury LR 142. This problem may be exacerbated where the statutory context of the relevant offence is broad and general in scope. Such consideration was taken into account by the English Crown Court in *R v Barclays* [2018] 5 WLUK 736, when it declined to introduce a special rule of attribution for the purpose of the offence of fraud by false representation set out in s 2 of the UK Fraud Act 2006. Among its reasons, the court opined that a special rule was unnecessary because the relevant statutory purpose would not be thereby thwarted (at [193]):

> "Thwarted" does not mean "make the SFO's task more difficult" or something along the lines of, "criminal liability ought to attach in these circumstances". It is, of course, much easier to hold that a statutory purpose has been thwarted if that purpose is narrow and specific. A significant part of the difficulty arises because the SFO is invoking *Meridian* where the statutory context is so broad and general.

51 Neither the YIC nor the Prosecution referred to any case where a special rule of attribution was created and applied in a strictly criminal context. The court pointed out to the parties at the hearing that it appeared that special rules

of attribution were created and applied for essentially regulatory offences (see, *eg*, the decisions in *Meridian* and *Director General of Fair Trading v Pioneer Concrete (UK) Ltd and another* [1995] 1 AC 456).

52 As stated earlier in this judgment (at [30] above), the YIC suggests that a special rule of attribution in this case should permit the attribution of the acts and mental states of any of the company's employee(s) who, with the authority of the company, dealt directly with the third party. For the reasons discussed earlier, we think that such a rule would be overly inclusive if it encompasses employees regarded as having apparent or ostensible authority to deal with the relevant third party. We agree with the respondent that such an approach may lead to an unrealistic standard being imposed on companies. We do not think such an expansive view of corporate attribution could be justified merely on the basis that Singapore adopts a strict stance against corruption in the public sector.

53 It is not clear to us how or why the Prosecution's suggested exceptions to the YIC's proposed rule should apply. The exceptions were the breach of duty exception and the reasonable practicability exception (see [32] above).

54 As stated in Hans Tjio, Pearlie Koh and Lee Pey Woan, *Corporate Law* (SAL Academy Publishing, 2nd Ed, 2024) at para 07.027, the breach of duty exception (also known as the *Re Hampshire Land* principle) is not a rule that excludes attribution when the agent defrauds the principal but is instead an application of the general principle that the law will not impute to a principal the wrongdoing of its agent so as to defeat the principal's claim against the errant agent. The rule therefore exists to govern the agent's civil liability to the principal and we do not think it should be extended to serve as a defence for a principal against criminal liability.

55 Under the suggested reasonable practicability exception, attribution is not permissible if the company has taken all reasonably practicable steps to prevent its employees from carrying out corrupt acts. However, the application of such an exception may alter the complexion of a s 6(*b*) PCA offence to something not intended by Parliament. The *mens rea* of a s 6(*b*) offence requires that (a) the relevant gratification be given as an inducement or reward for the conferment of a benefit; (b) there was an objectively corrupt element in the transaction; and (c) the gratification was given with guilty knowledge: *Public Prosecutor v Kong Swee Eng* [2022] 5 SLR 310 ("*Kong Swee Eng*") at [47]. These elements require the offender to have a corrupt intent. However, the application of the reasonable practicability exception would result in the company being culpable because it had not taken all reasonably practicable steps to prevent the commission of the PCA offence, something not envisaged in the PCA.

56 It may be argued that it is desirable that criminal liability be imposed on companies that have failed to act with necessary diligence by taking all reasonably practicable measures to prevent corruption. As the YIC and the Prosecution have alluded to, such an approach may be necessary in order to ensure that our anti-corruption law can keep up with modern corporate practice and large corporations with multiple layers in their corporate hierarchy. In the UK, its Bribery Act 2010 introduced the offence of commercial organisations failing to prevent bribery. This offence is considered a "failure to prevent" offence, in that the company is liable only for its failure to prevent the underlying criminal conduct from occurring: see the UK Law Commission, *Corporate Criminal Liability: An Options Paper* (10 June 2022) at para 5.48. The relevant provision is reproduced as follows:

> **7 Failure of commercial organisations to prevent bribery**
>
> (1) A relevant commercial organisation ("C") is guilty of an offence under this section if a person ("A") associated with C bribes another person intending—
>
> (a) to obtain or retain business for C, or
>
> (b) to obtain or retain an advantage in the conduct of business for C.
>
> (2) But it is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.

57 However, we think that Parliament is the proper authority to consider whether such an expansion of the ambit of corporate criminal liability for corruption is necessary in Singapore. Indeed, in the context of an ongoing review of the PCA announced by the Corrupt Practices Investigation Bureau in 2018, Minister Chan Chun Sing (for the Prime Minister) stated in Parliament (Singapore Parl Debates; Vol 95, Sitting No 70; [4 October 2022]):

> The review has concluded that PCA, as it stands, provides effective deterrence and adequately empowers CPIB to carry out its duties. There is, therefore, no need to amend or enhance the existing provisions. Besides providing for tough enforcement action against corrupt individuals, PCA offers sufficient basis for the prosecution of corporate bodies in Court if the facts of the case call for it. This extends to instances where corporate entities are found to be complicit in the corrupt conduct of their employees. CPIB has successfully taken corporate bodies to task in the past and will not hesitate to do so.

58 As the respondent points out, these remarks were made at the time when the *Tom-Reck* test was still considered to be the operative test for corporate attribution. This indicates that Parliament did not intend at the time to enhance the existing provisions of the PCA and only intended for companies complicit in the employee's corrupt conduct to be prosecuted. This fortifies our view that

the court should not adopt an expansive view of attribution of culpability in the context of s 6(*b*) of the PCA.

The appropriate approach to corporate attribution in the criminal and regulatory context

59 In our view, the *Tom-Reck* test ought to remain as the operative test for determining criminal liability by way of attribution. The focus is on whether the relevant wrongdoer can be considered to be the directing mind and will of the company in the context of the relevant offending act. This analysis should not be preoccupied with identifying an "*alter ego*" or an individual who is driving the company. Instead, the analysis ought to look at whether the actions of the employee were in truth reflective of the actions of the company.

60 Using the directing mind and will approach, it is still possible to attribute the relevant wrongdoer's acts and knowledge to the company if the company's directors or senior management knew that the illegal acts were being carried out by the wrongdoer but chose to do nothing because those acts benefited the company or at least did the company no harm. In such a case, it could be said that there was tacit approval of the offending acts and, as the quote from the Minister's speech at [57] states, the company can be found to be "complicit" in the corrupt conduct of its employee.

61 As for special rules of attribution, it would not be appropriate in most instances for the court to apply such rules of attribution for the purpose of imposing liability on a company for an offence committed by its employees. However, such special rules can be useful in limited contexts. Where regulatory offences are concerned, especially those which impose obligations on the corporate entity itself, it may be appropriate for the court to formulate a special

rule of attribution where it is just to do so, always bearing in mind the policy and the purpose of the relevant legislation. In such circumstances, the special rule should be formulated with reference to the employees in the company who are likely to directly undertake or be responsible for the fulfilment of those obligations. This would usually be so for the employees involved in the operational work or administrative tasks of the company. Depending on the nature and the content of the obligation, attribution would usually be more likely if the company had no measures in place to control the employees who actually carry out the relevant operational work or administrative tasks.

62 An example of how special rules of attribution may be applied in the regulatory context can be seen in *Meridian.* In that case, the relevant issue was whether a rogue employee's knowledge ought to be attributed to the company for the purpose of determining whether the company had breached its obligation under s 20(3) read with s 20(4)(e) of the Securities Amendment Act 1988 to give notice as soon as the company became a substantial security holder in a public issuer. The Privy Council implemented a rule of attribution that imputed to the company the knowledge of the person who, with the authority of the company, acquired the relevant interest. The court's ruling gave effect to the legislation's object of compelling the immediate disclosure of the identity of persons who became substantial security holders in public issuers in the backdrop of fast-moving markets and of disincentivising companies from allowing employees to gain interests on their behalf without having them report the acquisition: *Meridian* at 511.

63 Another example of how special rules of attribution may apply is *Tesco Stores Ltd v Brent London Borough Council* [1993] 2 All ER 718. Although that case was decided before *Meridian,* it is consonant with the court applying a

special rule of attribution in effect. The relevant statutory provision in the UK Video Recordings Act 1984 made it an offence to offence to sell age-restricted video recordings to an underaged person. Under that Act, it was a defence if the seller neither knew nor had any reasonable grounds to believe the buyer was underaged (at 719–720). The cashier who made the sale was found to have reasonable grounds to believe that the buyer was underaged. In holding that the defendant could not invoke the said defence, the court decided to attribute the knowledge of the cashier to the company. In such a situation, it could not be the knowledge or belief of the company's board of directors as the directors would obviously not have any knowledge or reasonable grounds for belief. The court there stated that the statute would otherwise be "ineffective in the case of a large company" (at 721).

64 In our view, this was a commonsensical and an entirely sensible application of a special rule of attribution for the particular legislation. The obligation was imposed on the company not to do something in the course of its daily operations. It would then be absurd to apply the statutory defence by reference to the knowledge of the directors who would obviously not be involved in the sales on the shop floor. The knowledge or belief could only be those of the company's employees on the ground.

The appeal on the facts

65 The central issue in this appeal is whether Xi could be considered the directing mind and will of the respondent for the purpose of imposing criminal liability under s 6(*b*) of the PCA on the respondent. Turning to the first limb of the *Tom-Reck* test, the DJ was correct in holding that Xi could not be deemed the directing mind and will of the respondent. As the respondent points out, the company had an extensive hierarchy and the Singapore Branch was only one of

24 different branches. There were also strict reporting lines within the respondent and the Singapore Branch reported to the respondent's Overseas Department, which in turn reported to overall management, as seen in the respondent's organisation chart (at Annex 1).

66 The Prosecution's key submission was that Xi ought to be viewed as the living embodiment of the respondent as his acts fell within the appropriate sphere of his responsibility and that covered the respondent's Singapore operations and the respondent's tenders for Singapore projects. However, the evidence showed that Xi did not have the necessary authority in respect of the tender process for Singapore projects.

67 The Singapore Branch's tenders were subject to the supervision of higher management in that any bid prepared by the Singapore Branch had to be first approved by higher management. Details such as the contract terms, basis for tender pricing, contractual scope and rationale for participating in the tender had to be submitted to the respondent's Business Development Department, which would then obtain input from various other departments in the respondent before convening a meeting with various leaders from the relevant branches. At the meeting, the proposed tender had to achieve a certain score to obtain approval for the Singapore Branch to proceed with the submission of the tender.

68 This evaluation process was confirmed by two of the respondent's witnesses, Mr Hou Wen Tao ("Hou"), the general manager of the Singapore Branch before Xi, and Mr Fan Peng, who was the general manager in the Singapore Branch replacing Xi. For instance, Hou testified that information such as the contract terms and the project's objectives and strategies had to be submitted to higher management for evaluation.

69 Additionally, the power of attorney issued to Xi in respect of project C885 excluded any power of entering into any financial contracts or agreements creating liabilities for debt, even though he had the power to enter into other kinds of agreements regarding the project for and on behalf of the respondent. This clearly circumscribed the scope of Xi's authority.

Insufficient evidence of tacit approval by Liu

70 There was insufficient evidence to show that the respondent's top management was aware of or was somehow complicit in Xi's illegal acts, such that Xi's acts could be considered to have received the respondent's tacit approval. The Prosecution's case was that Liu, who was based in China, had been informed of the discussions to pay Foo a bribe around late October 2016 but failed to raise any objection. Instead, Liu approved Foo's request for a loan. The Prosecution points to this exchange on WeChat between Li and Xi on 20 October 2016:

> Li: [Foo] sent a message saying that if he can influence the ownership of the tunnel boring machine and the amount owed, and the LTA does not deduct the cost of the second set of moulds, can we help him solve his personal debts?
>
> Already reported to Hongjun, he asked me to report to you and Director Liu.
>
> Xi: Let's negotiate after Director Liu comes today.
>
> …
>
> If he can give us the next project, we can help him out.

71 After this exchange, the Prosecution points to the following Whatsapp correspondence between Li and Foo on 22 October 2016 as further evidencing Liu's knowledge and involvement:

> Li: … Mr Liu is grateful for your support and willing to help you of the troubles, …
>
> Foo: Thanks Li. Pls [*sic*] convey my gratitude to Liu. …

72 We agree with the respondent that the Prosecution has not adduced the necessary evidence to prove its assertion concerning Liu's involvement as a matter of fact. Neither Xi nor Liu was called to testify in the trial and Li's correspondence with Xi on 20 October 2016 only suggests that Liu may have been informed subsequently of Foo's request after the discussion. The WeChat messages do not go further to prove that Foo's request was actually conveyed to Liu.

73 Further, Li's testimony under cross-examination was that he could not recall if Foo's request was conveyed to Liu. Foo's testimony under examination, as the Prosecution's witness, was that he could not recall who Mr Liu was, even when presented with the Whatsapp messages between Li and himself on 22 October 2016. No further evidence was led from Foo in relation to his request in October 2016. This reduces the utility of the Whatsapp messages on 22 October 2016 in supporting an inference that Liu had, in fact, been informed of Foo's request.

74 We reiterate that it was not the Prosecution's case that Liu was involved in the bribes that were eventually given to Foo. Li also testified that he was not aware of any loan being given to Foo pursuant to Foo's request in October 2016. Accordingly, there was insufficient evidence to show that Liu had given tacit approval for Foo to be paid bribes in the form of loans or that his approval was linked to the actual payment of bribes to Foo from 2018 to 2019.

75 We were also not persuaded by the Prosecution's submissions that the respondent's system provided a strong incentive for its employees to obtain tenders by all means, including bribery. The Prosecution alleged that this was sustained by the respondent's overseas branches having incentives and punishments based on their performance, which rendered the respondent's anti-corruption policies inadequate.

76 We do not think that such a factor ought to favour the attribution of the corrupt acts to the respondent. A company can have various sorts of incentives and disincentives for its employees. This would be particularly so for companies involved in sales where commissions would often influence the employees' income. It cannot be right that all such companies would thereby be more likely to be held criminally liable for the illegal acts of their employees in their quest to achieve higher sales and commissions.

77 As highlighted earlier at [17] to [19], the respondent's Singapore employees had to resort to fraud against the respondent in order to obtain the $200,000 to be given as loans to Foo. Zhou also had to borrow money to provide the subsequent $20,000 loan. All these showed clearly that the respondent was never involved in its employees' illegal activities and neither did it give its tacit approval or pretend to be ignorant of what the Singapore Branch's employees were doing. It would be highly unjust to attribute Xi's corrupt acts to the respondent in these circumstances.

78 Accordingly, we agree with the DJ in his holding that Xi was not the "living embodiment" of the respondent in committing the corrupt acts. For the same reasons discussed above, we also do not think that Xi's acts can be

regarded as falling within the scope of a properly delegated function of management.

Aggregation

79 For completeness, we note that one of the matters that the YIC was asked to submit on was the issue of corporate attribution where more than one associated person of the company were involved in the commission of the acts constituting the offence. In essence, this touched on the question of whether the aggregation of different acts and knowledge by different individuals was permissible for the purpose of holding the company criminally liable for their combined effect. However, both the Prosecution and the respondent take the position that the issue of aggregation would not affect the outcome of this appeal as Xi's acts and mental state, if attributed to the respondent, would be sufficient to render it culpable for the corrupt acts. We therefore decide that there is no need to discuss the issue of aggregation in this appeal. We are grateful of course to the YIC for his detailed written submissions on this issue.

Conclusion

80 For the reasons set out above, we uphold the DJ's decision to acquit the respondent on the three corruption charges. Accordingly, we dismiss the Prosecution's appeal.

81 We thank the YIC and both parties for their very helpful written submissions which benefited us in our deliberations on the weighty issues raised in this appeal

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Andrew Phang
Senior Judge

Alan Loh Yong Kah, Kang Jia Hui and Andrew Chia Cheng Yi (Attorney-General's Chambers) for the Prosecution;
Paul Loy Chi Syann, Yii Li-Huei Adelle (WongPartnership LLP) and Chiam Yunxin (Christopher Chuah Law Chambers LLC) for the respondent;
Nguyen Vu Lan (TSMP Law Corporation) as Young Independent Counsel.

Annex 1: The respondent's organisational chart