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

[2025] SGHC 179

Magistrate's Appeal No 9202 of 2024/01

Between

Public Prosecutor

… *Appellant*

And

Yeo Teck Soon

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Sentencing — Benchmark sentences]
[Criminal Procedure and Sentencing — Sentencing — Appeals]
[Criminal Law — Statutory Offences — Workplace Safety and Health Act 2006]

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Public Prosecutor
v
Yeo Teck Soon

[2025] SGHC 179

General Division of the High Court — Magistrate's Appeal No 9202 of 2024/01
Sundaresh Menon CJ, Steven Chong JCA and Vincent Hoong J
22 July, 8 August 2025

10 September 2025 Judgment reserved.

Steven Chong JCA (delivering the judgment of the court):

1 The Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed) ("WSHA") was enacted in 2006 to replace the Factories Act (Cap 104, 1998 Rev Ed) (the "Factories Act") as the principal legislation which regulates occupational safety and health in Singapore. While the Ministry of Manpower began work on reforming the Factories Act in 2001, this endeavour was accelerated by the occurrence of three high-profile workplace accidents in 2004 which claimed a total of 13 lives: Singapore Parl Debates; Vol 80, Sitting No 16; Col 2204; 17 January 2006 (Dr Ng Eng Hen, Minister for Manpower) ("*Hansard*"). Following those tragedies, the Government undertook a review of its existing legislation to improve safety at the workplace. Parliament envisioned that the WSHA would achieve this objective by defining persons who would be accountable for workplace safety and health hazards, defining their responsibilities, and instituting penalties which would reflect "the true

economic and social cost of risks and accidents": *Hansard* at col 2206. This finds expression in Part IV of the WSHA, which introduces a liability regime that assigns legal responsibility to those who create and have control over safety and health risks: *Hansard* at col 2209.

2 This court has on previous occasions, considered the sentencing principles which relate to the duties imposed on employers under ss 12(1) and 12(2) of the WSHA: see *Public Prosecutor v Manta Equipment (S) Pte Ltd* [2023] 3 SLR 327 ("*Manta Equipment*") and *Koh Lian Kok v Public Prosecutor* [2024] 4 SLR 1526 ("*Koh Lian Kok*"). The present appeal presents an opportunity for this court to consider the sentencing principles which are applicable to a different category of stakeholders, namely: (a) manufacturers and suppliers of machinery, equipment or hazardous substances used at work pursuant to s 16(1)(*b*) of the WSHA; and (b) officers of a body corporate, who face secondary liability for their company's breaches of the WSHA pursuant to s 48(1) of the WSHA. As these issues have yet to be considered in detail in Singapore, we appointed Ms Rennie Whang Yixuan ("Ms Whang") as Young Independent Counsel to assist the court in this regard. At this juncture, we record our deep appreciation for Ms Whang's able assistance in this appeal.

Facts

3 The respondent, Mr Yeo Teck Soon, was the director of Formwork Hire (S.E.A.) Pte Ltd (the "Company"), which was a company that supplied parts for formworks. In 2016, the Company was engaged to supply formwork materials to a worksite at 47 Jalan Buroh (the "Worksite"). Such materials were supplied to the Worksite on 33 occasions between 3 and 30 March 2016 (the "Supplied Materials").

4 On 2 April 2016, a section of a table formwork structure, which supported a rampway slab, collapsed at the Worksite (the "Collapsed Formwork"), resulting in non-fatal injuries to one worker. The Company's formwork materials had been used to erect the Collapsed Formwork. Subsequent investigations revealed that the Collapsed Formwork contained various defects, such as the presence of severe corrosion on scaffold frames, which had been painted over. According to an investigative report, these defects had severely reduced the load bearing capacity of the Collapsed Formwork.

5 The Company faced a single charge under s 16(1)(*b*) read with s 20 of the WSHA for failing to ensure, as far as reasonably practicable, that the equipment supplied was safe when properly used. A similar charge under s 16(1)(*b*) read with ss 20 and 48(1) of the WSHA was brought against the respondent, as s 48(1) of the WSHA imposes secondary liability on the officers of a company for the company's WSHA offence. Both the respondent and the Company claimed trial to their respective charges.

The decision below

6 The District Judge ("DJ") convicted the respondent and the Company of their respective charges: see *Public Prosecutor v Formwork Hire (S.E.A.) Pte Ltd & Anor* [2024] SGDC 28 ("*Judgment (Conviction)*"). In so concluding, the DJ found that the Collapsed Formwork had been erected solely with the Company's materials and the Supplied Materials had already contained the aforementioned defects when they were delivered to the Worksite. While certain measures had been put in place by the Company to check for and prevent defective formwork materials from being supplied (the "SOP"), these measures had not been followed by the workers of the Company. The respondent and the Company had failed to ensure that the Company's workers had dutifully

followed the SOP to ensure that the Supplied Materials were free of defects at the time of their delivery. These defects, which were widespread, would have reduced the load bearing capacity of the Supplied Materials and increased their chances of giving way when used to erect a formwork structure. Furthermore, the defects in the Supplied Materials contributed to (but did not, on their own, cause) the collapse of the formwork structure at the Worksite.

7 The Company was sentenced to a fine of $280,000: see *Public Prosecutor v Formwork Hire (S.E.A.) Pte Ltd & Anor* [2024] SGDC 148 ("*Judgment (Sentencing)*"). In arriving at this sentence, the DJ adopted the two-stage sentencing approach as set out in *Manta Equipment* and *Koh Lian Kok* (the "Two Stage Framework"). This involved a determination of the level of harm posed by the offence and the level of the offender's culpability for the offence. The court would use these two factors to arrive at an indicative starting point, which could be further adjusted after considering the *offender*-specific aggravating and mitigating factors. In this regard, the court concluded that the Company's offence involved a high level of harm. Furthermore, the Company's culpability was moderate in the light of the following factors: (a) the number and seriousness of the defects in the Supplied Materials; (b) the nature of the safety breaches; (c) the fact that the safety breaches were not isolated; and (d) the fact that the safety breaches were committed negligently.

8 The DJ then imposed a fine of $150,000 on the respondent. In arriving at this sentence, the DJ similarly adopted the Two Stage Framework. However, the court acknowledged that unique considerations would apply when sentencing an officer of a company under s 48(1) of the WSHA. In particular, the level of harm arising from the officer's offence would be pegged to the level of harm arising from the Company's conduct as it was an objective and unchanging factor. However, the officer's culpability would depend on: (a) his

role within the company regarding safety matters; (b) the materiality of his conduct to the company's breach of the WSHA; and (c) the officer's motive (if any) for allowing the breach to occur. The DJ also opined that the factors relating to a company's culpability would remain relevant considerations when assessing its officer's culpability.

9 The DJ found that the harm posed by the respondent's offence, which was pegged to the level of harm caused by the Company's offence, was high. However, the respondent's culpability was found to be low as the crux of his offence was that of negligence. He failed to ensure that his workers had dutifully complied with the SOP and had failed to implement a more robust checking system before the Supplied Materials were delivered to the Worksite. There was no evidence to show that he: (a) fostered a culture of indifference to safety consciousness in the Company; (b) was personally aware of the defects in the Supplied Materials; or (c) consented to or connived at the Company's breach of s 16(1)(*b*) of the WSHA. As there were no offender-specific sentencing factors, the DJ imposed a fine of $150,000 on the respondent.

The parties' cases on appeal

The Prosecution's position

10 The Prosecution appeals against the sentence imposed on the respondent. It contends that the DJ erred in assessing the respondent's culpability to be low, as opposed to moderate. The Prosecution advances three main arguments to support this contention. First, the respondent had allegedly condoned a culture of blind trust among workers in the Company, which undermined safety within the Company. Second, the Company had implemented an inherently ineffective system to check on the quality of its formwork materials. According to the Prosecution, the respondent *knew* of the

flaws within the Company's SOP but failed to remedy it. Third, the respondent did not provide adequate training to the Company's workers as they were not given any formal guidance on how to: (a) identify defective materials; and (b) assess which materials should be repaired and which should be scrapped.

11 The Prosecution submits that these three factors, taken together, show that the respondent was closely involved in the Company's offence. As such, the same factors which were considered in the DJ's assessment of the Company's culpability (the "Company Culpability Factors") are equally applicable to the assessment of the respondent's culpability. As a result of this, the respondent's culpability should be assessed as "moderate" in line with the Company's culpability.

The respondent's position

12 In response, the respondent contends that the DJ had correctly assessed his culpability to be low for three reasons. First, the respondent had not admitted to exercising "blind trust". While he delegated the supervision of health and safety to various heads of department and trusted his staff, this trust was placed within a framework of established procedures, checks, and personal oversight by the respondent. Second, the allegation that the respondent *knew* of the Company's inadequate SOP was never put to him in the trial below. Third, the allegation that the respondent had not provided proper training to the Company's workers was similarly not put to the respondent in the trial below.

Issues to be determined

13 Based on the forgoing, the following issues arise for this court's determination:

(a) What is the applicable sentencing framework for offences under s 16(1)(*b*) read with ss 20 and 48(1) and punishable under s 50(*a*) of the WSHA?

(b) Whether the DJ erred in assessing the respondent's culpability to be low. In this connection, three sub-issues arise:

(i) Whether the respondent fostered a culture of blind trust within the Company.

(ii) Whether the Prosecution had put its allegation to the respondent in the trial below that the Company's SOP was inherently ineffective, and that the respondent knew of the purported deficiencies in the SOP.

(iii) Whether the Prosecution had put its allegation to the respondent in the trial below that he had not provided adequate training to the Company's workers.

Issue 1: The applicable sentencing framework for offences under s 16(1)(*b*) read with ss 20 and 48(1) of the WSHA and punishable under s 50(*a*) of the WSHA

(a) Sentencing framework and benchmarks

Sentencing framework

14 We begin with the applicable sentencing framework for the present offence. As there is a dearth of cases which relate to the sentencing of offenders under s 16(1)(*b*) read with ss 20 and 48(1) of the WSHA, we invited Ms Whang to address us on the following question: what is the appropriate sentencing approach for an offence under s 16(1)(*b*) read with s 20 and s 48(1), and punishable under s 50(a) of the WSHA? In this context, we invited her to

consider: (a) what are the relevant considerations when assessing the culpability of an officer of the company; and (b) whether the factors relating to the company's culpability in committing the underlying offence should be relevant in assessing the officer's culpability and/or sentencing the officer.

15 In brief, Ms Whang submits that the sentencing framework in *Koh Lian Kok* should apply, with modifications, for offences under s 16(1)(*b*) read with ss 20 and 48(1) of the WSHA. Ms Whang reasons that adopting the Two Stage Framework accords with the legislative intention of placing an equal emphasis on both culpability and harm in imposing sentences for offences under the WSHA as a whole. Furthermore, while *Manta Equipment* and *Koh Lian Kok* concerned offences under other provisions of the WSHA and not s 16(1)(*b*), those offences still come under the general duties in Part IV of the WSHA (where s 16(1)(*b*) is located), which impose the same standard of "reasonable practicability" on various stakeholders and would therefore involve similar sentencing considerations. As for the officer's secondary liability under s 48(1) of the WSHA, Ms Whang takes the view that the Two Stage Framework is equally applicable as s 48(1) shares the same legislative purpose as the general duties under Part IV of the WSHA, *ie*, to "expand responsibility and better define persons who are accountable for safety outcomes" and to "get all stakeholders to embed occupational safety and health into their daily operations".

16 The Prosecution agrees with Ms Whang's reasoning and submits that the Two Stage Framework should apply in the present case. It contends that while the Two Stage Framework was developed in the context of other offences under the WSHA which protect a different class of persons, the framework should apply to s 16(1)(*b*) offences as the underlying objective of the WSHA is to ensure that *all* stakeholders are made responsible for the workplace safety of

all. Further, while s 48(1) prescribes different levels of *mens rea* (*eg*, an officer may have consented to the company's offence or may have simply been negligent) and s 50(*a*) of the WSHA does not expressly stipulate the same for a natural person charged for a WSHA offence, these considerations would nonetheless apply when *sentencing* a natural person who had committed an offence under Part IV of WSHA.

17 The respondent did not explicitly state his position on the applicable sentencing framework for the present offence in his written submissions. However, he appears to implicitly accept that the Two Stage Framework should apply as his submissions assume that the sentencing framework in *Koh Lian Kok* is applicable in the present case.

18 In our judgment, we agree that the Two Stage Framework should apply in the present case.

> (a) Similar sentencing considerations apply to the duties under Part IV of the WSHA (the "Part IV Duties"). We have previously observed that the Part IV Duties such as those under ss 12(1), 12(2) and 16(1) of the WSHA are "largely similarly formulated" as they require stakeholders to take "reasonably practicable measures" to ensure the safety and health of other parties in the workplace: *Manta Equipment* at [32]. As these provisions relate to the same duty to take reasonably practicable measures to ensure safety and health, it stands to reason that the same considerations surrounding harm, culpability and the relevant aggravating and mitigating factors under the Two Stage Framework should apply across the offences. This is congruent with our previous observation that the Two Stage Framework should in principle apply to all WSHA offences under Part IV which are punishable under s 50 of

the WSHA: *Manta Equipment* at [39]. We emphasise that our analysis only relates to Part IV Duties which are punishable under s 50 of the WSHA, such as the present offence. We have previously observed that Part IV Duties which are not punishable under s 50 of the WSHA are largely of a different character than those for which contravention is so punishable. We thus suggested, without deciding, that the Two Stage Framework may be inappropriate for Part IV Duties which are not punishable under s 50 of the WSHA: see *Manta Equipment* at [38]. However, nothing turns on this in the present appeal as the respondent's offence is punishable under s 50(*a*) of the WSHA.

(b) The parliamentary debates state that the relevant circumstances which are to be considered for the sentencing of WSHA offences punishable under s 50 include the factors of culpability, potential harm, and actual harm without prioritising any one factor (*Hansard* at col 2215):

> This Bill contains a revised penalty framework in Part X. First, maximum penalties have been increased. This is reflected in clause 50. … The Factories Act contains a stepped penalty regime based on the harm done. The inadequacy of this regime is that it does not allow for meaningful penalties in cases where there are severe lapses, but fortuitously no accidents have occurred. Under the Bill, a single maximum penalty is prescribed. However, *the penalty, in any given case, will be applied taking into account all the relevant circumstances, including the culpability of the offender, the potential harm that could have been caused, and the harm actually done.*
>
> [emphasis added]

This is why the court found it appropriate to consider the twin factors of harm and culpability in the first stage of the Two Stage Framework to begin with: see *Manta Equipment* at [24]–[27]. It is thus logical for the

Two Stage Framework, which considers and accords equal weight to the twin factors of harm and culpability, to apply to the present offence which is punishable under s 50 of the WSHA.

(c) While we observe that the present offence relates to the respondent's *secondary liability* for the Company's breach of its Part IV Duties, s 48(1) of the WSHA is meant to incentivise companies to prioritise safety and health practices at their workplaces by imposing criminal liability on their directors for the company's breaches (*Hansard* at col 2211):

> *To engender a strong safety culture*, commitment of top management is critical. Hence, *the Bill holds managers and directors of companies accountable for safety and health practices at their workplaces under clause 48*, even though managers may not be able to police safety and health on the ground. This means that even though physical supervision of workers may be delegated, management must show that they have taken active steps to implement sound OSH management systems, including proper risk assessments and reporting systems, provide adequate resources, and ensure that full information is disseminated to workers and other persons exposed to risks.
>
> [emphasis added]

This is *similar* to the common thread in the Part IV Duties which are punishable under s 50 of the WSHA, which is to incentivise various stakeholders to take reasonably practicable measures to ensure the safety and health of various persons at worksites. In this connection, we agree with Ms Whang's submissions that both s 48(1) of the WSHA and the Part IV Duties share a fundamental legislative purpose, which points towards a consistent sentencing approach.

19 For completeness, we acknowledge that a breach of the duty under s 16(1) of the WSHA may be more likely to result in greater harm than an employer's breach of s 12(1): *Manta Equipment* at [34]. This is because s 16 relates to manufacturers and suppliers of machinery and equipment specified in the Fifth Schedule of the WSHA, which have been identified as generating more accidents: *Hansard* at col 2210. However, as this court recognised in *Manta Equipment* at [34], this can be accounted for by categorising the harm according to the particular facts of the case at hand at the first stage of the Two Stage Framework.

Sentencing benchmarks

20 We turn to consider the sentencing benchmarks which are applicable in the present case. The Prosecution and Ms Whang take the view that the sentencing benchmarks in *Koh Lian Kok* should apply in the present case. We also observe that the DJ considered the sentencing benchmarks in *Koh Lian Kok* to be a useful reference in determining the indicative starting point under the first step of the Two Stage Framework: see *Judgment (Sentencing)* at [35].

21 In our view, the sentencing benchmarks in *Koh Lian Kok*, and not *Manta Equipment*, should apply under the Two Stage Framework for the respondent's offence. This is because s 50 of the WSHA prescribes different sentencing options for offenders depending on whether they are corporations or natural persons. The sentencing benchmarks in *Manta Equipment*, which were developed in the context of a corporate offender, cannot simply be transposed to an offender who is a natural person: *Manta Equipment* at [36]. Instead, the sentencing benchmarks in *Koh Lian Kok*, which were modified to account for an offender who is a natural person, should be applied: *Koh Lian Kok* at [28] and [63]. We agree with the Prosecution's reasoning that the *Koh Lian Kok*

sentencing benchmarks, which were based on s 50(*a*) of the WSHA, should apply in the present case as the present offence is also punishable under s 50(*a*) of the WSHA.

(b) The relevant considerations when assessing an officer's culpability under s 48(1) of the WSHA

22 Having determined the applicable sentencing framework and benchmarks that should apply in the present case, we turn to the relevant factors that the court should consider when assessing an officer's culpability under the second stage of the Two Stage Framework. In this context, Ms Whang submits that the court can consider the following factors:

(a) The officer's role in the company, which includes a consideration of: (i) whether it was within the officer's primary responsibility to deal with matters of health and safety; and (ii) the extent to which the officer was able to make, or participate in the making of, decisions affecting the company in relation to health and safety.

(b) The extent of the officer's participation in the company's breach of its Part IV Duty. This includes a consideration of: (i) the officer's mental state and whether there were any relevant prior warnings or circumstances indicating a risk to workplace safety and health; (ii) whether the officer took steps in connection with the offence, such as attempting to conceal the wrongdoing; (iii) whether the officer made any effort to find out what he was required to do in terms of health and safety; and (iv) the extent to which the officer was involved in the actual commission of the offence.

(c) The officer's duration of offending.

(d) Whether the officer's offending conduct was motivated by financial gain or the avoidance of costs.

23 In arriving at the abovementioned factors, Ms Whang canvassed the Culpability Factors which had been considered in sentencing officers for their company's breach of the WSHA or the foreign equivalent of the WSHA in Singapore, the UK, and Australia. She began by identifying three local decisions which involved the prosecution of officers for primary offences which had been committed by their companies under both s 48(1) of the WSHA and s 331(3A) of the Securities and Futures Act (Cap 289, 2006 Rev Ed) ("SFA"). She then considered the Culpability Factors which were identified in various English decisions and sentencing guidelines relating to the prosecution of officers for the primary offences of their companies under the Health and Safety at Work etc Act 1974 (c 37) (UK) ("UK HSWA"). Lastly, she considered the equivalent regime in Australia, which encompasses the Model Workplace Health and Safety Act ("Model WHSA") which is implemented in jurisdictions outside of the state of Victoria and s 144(1) of the Occupational Health and Safety Act 2004 (VIC) ("OSHA VIC") in the state of Victoria. Ms Whang then consolidated the Culpability Factors which were identified in cases and sentencing guidelines across these three jurisdictions to identify the abovementioned Culpability Factors.

24 The Prosecution agrees with the factors identified by Ms Whang.

25 The respondent appears to agree with most of Ms Whang's factors. For instance, he accepts that the following factors are relevant when determining an officer's culpability for an offence under s 48(1) of the WSHA:

(a) The *mens rea* of the officer, namely whether he consented to or connived in the company's underlying offence or had simply been negligent.

(b) The materiality of the officer's misconduct with respect to the company's primary offence.

(c) The officer's motive for his offending conduct.

(d) Whether the officer had taken steps to mitigate the effects of the company's underlying offence.

26 However, the respondent disagrees with the manner in which the officer's *role* should be considered in the culpability analysis. The respondent's position is somewhat nuanced and will be canvassed in greater detail below (see [31] below). The respondent also takes issue with certain discrete cases and foreign sentencing guidelines that Ms Whang relied on in determining the relevant factors for determining an officer's culpability under s 48(1) of the WSHA.

27 We generally agree with Ms Whang's reasoning and accept the Culpability Factors identified by her for the reasons that follow.

Singapore authorities

28 We first consider the three local decisions cited by Ms Whang. These decisions are generally useful as they identify factors which relate to the culpability of an officer who is prosecuted for his company's primary offence. The first case, *Public Prosecutor v Gary Choo Pu Chang* [2022] SGDC 128 ("*Gary Choo*"), concerned an executive director of a company who had pleaded guilty to a charge under s 12(1) read with ss 20 and 48(1) of the WSHA. In

assessing the offender's culpability, the court considered the extent of his responsibilities in the company and the extent of his involvement in the company's breach of its Part IV Duty: *Gary Choo* at [53]–[54]. In our view, *Gary Choo* is highly persuasive as it relates to an officer's secondary liability under s 48(1) of the WSHA. As such, the factors identified by the court are of direct relevance to the present case.

29 The second case cited by Ms Whang is *Public Prosecutor v Tan Seo Whatt Albert and another appeal* [2019] 5 SLR 654 ("*Albert Tan*"), which concerned an offence under s 331(3A) read with s 240(1) of the SFA. In determining the offender's culpability, the court considered the role of the offender, the offender's mental state, the motive of the offender in offending, and the steps, if any, he had taken to mitigate the effects of the underlying offence. In our view, the factors identified in *Albert Tan* are also relevant to the present case. Much like s 48(1) of the WSHA, s 331(3A) of the SFA imposes secondary liability on a partner or manager of a limited liability partnership when the latter commits an offence under the SFA with the consent or connivance of or is attributable to the negligence on the part of, the manager or partner: see *Albert Tan* at [34]. These requirements closely resemble those found in s 48(1) of the WSHA and should engage similar sentencing principles.

30 The main difference, as Ms Whang recognises, is that s 331(3A) SFA is framed in "more general terms" than s 48(1) of the WSHA. Specifically, s 48(1) of the WSHA states that the officer will not be liable if he establishes, amongst other things, that he had exercised such diligence to prevent the commission of the offence as he ought to have exercised, *having regard to the nature of his functions in that capacity and to all the circumstances*. These provisions are set out below:

s 331(3A) of the SFA	s 48(1) of the WSHA
Corporate offenders and unincorporated associations **331**.— … (3A) Where an offence under this Act committed by a limited liability partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner or manager of the limited liability partnership, the partner or manager (as the case may be) as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.	**Offences by bodies corporate, etc.** **48**.—(1) Where an offence under this Act has been committed by a body corporate, an officer of the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless the officer proves that — (*a*) the offence was committed without his or her consent or connivance; and (*b*) he or she had exercised all such diligence to prevent the commission of the offence *as he or she ought to have exercised having regard to the nature of his or her functions in that capacity and to all the circumstances*. [emphasis added]

31 The respondent relies on this difference to argue that *Albert Tan* is of limited relevance as it is textually different from s 48(1) of the WSHA, which requires the court to consider the officer's role in establishing secondary *liability*. As such, he contends that the officer's role should not feature again in sentencing. Instead, he submits that the only aspect of the officer's "role" which can be considered when assessing his culpability is whether the officer was, as a practical matter, in a position to *directly* affect matters relating to health and safety, which would have a bearing on whether his action or inaction *directly* caused the company to commit the underlying offence.

32 We reject this submission. It is true that the court cannot treat a constituent ingredient of an offence as a factor which enhances the sentence: *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [84]. However,

the officer's role is examined from different perspectives when the court assesses: (a) the officer's criminal *liability*; and (b) the officer's culpability during sentencing. When the court assesses whether secondary liability is established under s 48(1) of the WSHA, the plain text of the provision suggests that the officer's role (*ie*, the "nature of his or her functions in that capacity") is relevant in determining the standard of care expected of him (*ie*, "such diligence … as he or she ought to have exercised") and consequently, whether he failed to meet that standard. However, during sentencing, the officer's role is relevant in assessing the *extent* to which he failed to meet the required standard of care. We thus share Ms Whang's view that the officer's function remains relevant during sentencing "as a matter of identifying the *severity* of the officer's breach of duty" [emphasis added].

33 The third case that Ms Whang relies on is *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 ("*Zheng Jia*"), which concerned an offence under s 157(1) of the Companies Act (Cap 50, 2006 Rev Ed). In *Zheng Jia*, the court listed various offence-specific factors that it could consider when sentencing an offender who had committed an offence of the kind with which that appeal was concerned (see *Zheng Jia* at [51]). With respect to Ms Whang, we do not think that the factors identified in *Zheng Jia* are directly applicable to the present case as the sentencing principles therein were developed in a specific factual context, which involved professional directors whose business models were premised on providing no or inadequate oversight over the affairs of companies: *Zheng Jia* at [44] and [50]. As the court in *Zheng Jia* observed, such cases would go beyond mere neglect. Instead, given the nature of such business models, the accused persons would have every intention to neglect his duty to exercise reasonable diligence from the outset: *Zheng Jia* at [46]. This differs from offences under s 48(1) of the WSHA, which may impose secondary liability on

officers who are merely *negligent*. Nonetheless, this does not affect the Culpability Factors identified by Ms Whang as *Zheng Jia* was only cited as authority for two factors: (a) that the court should consider whether the officer's offending conduct was motivated by financial gain; and (b) that the court should consider whether the officer took any steps to conceal his or the company's wrongdoing. The former was a factor which is also supported by *Albert Tan*, which remains a useful precedent. The latter is a factor which obviously relates to the blameworthiness of the offender.

Authorities from the UK

34 Ms Whang also refers to the Culpability Factors which have been identified in: (a) various reported and unreported English and Scottish decisions; and (b) the UK Sentencing Council's sentencing guideline for the prosecution of officers for the primary offences of their companies under the UK HSWA.

35 In our view, the cases cited by Ms Whang are persuasive as they relate to s 37(1) of the UK HSWA, which is similar to s 48(1) of the WSHA. The provision is reproduced below:

> **37 Offences by bodies corporate.**
>
> (1) Where an offence under any of the relevant statutory provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

36 As Ms Whang notes, s 37(1) of the UK HSWA is similar to s 48(1) of the WSHA as the former imposes secondary liability on officers of a company

for the company's offences if the primary offence was committed with the consent or connivance of or was attributable to the neglect on the part of, the officer of the company. In turn, the UK HSWA also imposes general duties under ss 2–8 which: (a) are largely similar to the Part IV Duties under the WSHA; and (b) impose the same standard of "reasonable practicability". For example, s 6(1)(a) of the UK HSWA is couched in similar terms to s 16(1)(*b*) of the WSHA. Section 6(1)(a) of the UK HSWA is reproduced below:

> **6 General duties of manufacturers etc. as regards articles and substances for use at work.**
>
> (1) It shall be the duty of any person who designs, manufactures, imports or supplies any article for use at work or any article of fairground equipment—
>
> (a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed that it will be safe and without risks to health at all times when it is being set, used, cleaned or maintained by a person at work;

37 As such, the Culpability Factors identified by the English and Scottish courts in sentencing offenders under s 37(1) of the UK HSWA are persuasive in the present context. These factors are broadly aligned with the Culpability Factors identified in the Singapore cases which have been cited by Ms Whang. For instance, the English courts consider similar factors such as the motive of the officer's offending conduct, whether the officer had previously ignored requests to implement measures to address health and safety risks, and the duration of the officer's disregard for safety standards: see *R v Leivers* [2023] EWCA Crim 1469 at [25]–[27].

38 Ms Whang also refers to various factors which the UK Sentencing Council has identified to be relevant in assessing the culpability of offenders. More specifically, Ms Whang points to the UK Sentencing Council's sentencing guideline for secondary liability for breaches of ss 2, 3, and 33(1)(c) of the

UK HSWA (the "UK HSWA Sentencing Guideline"). While the UK HSWA Sentencing Guideline does not relate to s 6(1) of the UK HSWA, which is the most analogous provision to s 16(1)(*b*) of the WSHA, the factors listed in the guideline do not appear to be couched in narrow terms and there is no obvious reason why such factors should not be equally relevant Culpability Factors in the present case. These factors are similar to those identified in the Singapore precedents and include: (a) the mental state of the offender; (b) whether significant efforts were made to address the risk, although they were inadequate on the occasion in question; (c) whether there was any warning or circumstance to indicate that there was a risk to health and safety; and (d) whether the officer's failings were minor and occurred as an isolated incident.

39 The respondent objects to Ms Whang's reliance on this sentencing guideline as the guideline divides an offender's culpability and harm into categories which are not identical with those identified in the Two Stage Framework. However, this argument overlooks the fact that Ms Whang's reference to this sentencing guideline was simply to identify relevant culpability *factors*. She does not propose to adopt the UK Sentencing Council's sentencing benchmarks for categorising different levels of harm or culpability.

Australian authorities

40 Lastly, Ms Whang refers to various Australian authorities. In particular, she refers to the Australian occupational safety and health regime, which encompasses the Model WHSA, which is implemented in jurisdictions outside the state of Victoria and s 144(1) of the OSHA VIC within the state of Victoria. Both the Model WHSA and the OSHA VIC contain various provisions which are similar to s 48(1) of the WSHA. These provisions impose liability on the

officers of a company if the officer fails to exercise reasonable care to ensure that the company complies with its duties under the relevant act.

41 Ms Whang highlights that both the Model WHSA and the OSHA VIC enumerate various factors which the court should consider in determining whether an officer had exercised due diligence. For instance, s 144(3) of the OSHA VIC requires the court to consider the following factors: (a) what the officer knew about the matter; (b) the extent to which the officer was able to make, or participate in the making of, decisions affecting the company in relation to the subject matter; and (c) whether the contravention by the company was attributable to an act or omission of any person other than the officer. In a similar vein, s 27(5) of the Model WHSA states various steps which may constitute the exercise of due diligence by the officer of a company. These factors, Ms Whang reasons, should be relevant considerations when assessing an officer's culpability under s 48(1) of the WSHA.

42 Ms Whang also identifies various factors which the Victorian Court of Appeal and the Industrial Court of New South Wales have considered when assessing an officer's culpability under s 144(1) of the OSHA VIC and the Occupational Health and Safety Act 1983 (NSW), respectively. Such factors include: (a) the level of knowledge of the officer; (b) the efforts taken by the officer to address the risks to workplace safety and health; and (c) the extent of the officer's involvement in the actual commission of the offence by the company.

43 The aforementioned factors are broadly similar to the Culpability Factors identified in the Singapore cases cited by Ms Whang. While we observe that there are some differences in the wording of the Australian legislation, such as the fact that s 144(1) of the OSHA VIC imposes *primary* liability on the

officer whereas s 48(1) of the WSHA imposes secondary liability on an officer, we do not think that this affects the Culpability Factors identified by Ms Whang. Most of the Culpability Factors are *also* supported by Singapore or English authorities, which continue to be useful precedents. Furthermore, we observe that the *substance* of the Culpability Factors which have been considered by the Singapore, English, and Australian authorities are generally consistent and aligned with each other.

(c) Relevance of a company's culpability factors when sentencing an officer of the company

44 We now consider the specific question of whether the factors relating to the company's culpability in committing the underlying offence should be relevant in assessing the officer's culpability and/or in sentencing the officer. These factors, which were identified in *Manta Equipment* at [28(c)] in relation to breaches of the Part IV Duties, consist of the following: (a) the number of breaches or failures; (b) the nature of the breaches; (c) the seriousness of the breaches; (d) whether the breaches were systemic; and (e) whether the breaches were intentional, rash or negligent.

45 This issue is relevant in the present appeal as the Prosecution alleges that the DJ failed to consider various factors relating to the *Company*'s wrongdoing in assessing the respondent's culpability. These include the fact that there were serious and obvious defects in the formwork materials, and that a significant number of the formwork materials were defective.

The parties' positions

46 Ms Whang submits that such factors should be considered in the assessment of the officer's culpability for five reasons. First, it aligns with the

wording of s 48(1) of the WSHA, which deems the officer to have committed the company's underlying offence. Accordingly, the culpability of the officer may, as a starting point, be at least as extensive as that of the company. Second, certain factors which relate to the company's culpability for the primary offence may measure the *severity* of the officer's offence. Third, decisions in Singapore and New South Wales have also referred to such factors when assessing the culpability of officers of a company. Fourth, certain acts by an officer may go towards the culpability of both the officer and the company, and it would be artificial to only consider such conduct in relation to one or the other. Fifth, it would cohere with the legislative purpose of s 48(1) of the WSHA, which is to prosecute and punish those who are in control of errant companies and who seek to hide behind the corporate veil. As such, Ms Whang submits that the court can consider the Company Culpability Factors (which were identified in *Manta Equipment*) except for the factor of whether the breaches were intentional, rash, or negligent.

47 During the hearing before us, Ms Whang accepted that an officer's culpability must be assessed in the light of the circumstances which are peculiar to the officer himself, and his culpability should not automatically be pegged to the culpability of his company for the underlying offence. She clarified that she was not advocating for a wholesale importation of the Company Culpability Factors when assessing an officer's culpability. Instead, she took the view that the Company Culpability Factors might form part of the background material that the court could consider when it analysed the following elements in its assessment of the officer's culpability: (a) the officer's role within the company; and (b) the extent of the officer's participation in the company's breach. Accordingly, she accepts that the Company Culpability Factors will only be

relevant in the assessment of an officer's culpability if the officer's acts or omissions bear a direct nexus to his company's breach of its Part IV Duty.

48 The Prosecution substantially agrees with Ms Whang's position. It submits that the court should be able to consider the Company Culpability Factors when assessing the officer's culpability. In this context, it will be relevant to first identify the company's breaches which can be attributed to an act or omission of the officer. The court should then consider the characteristics of these breaches and the extent of the officer's involvement in those breaches when assessing his culpability. The following factors should also be considered when assessing the officer's culpability: (a) the officer's state of mind or knowledge in relation to the company's breaches; and (b) the officer's role and responsibilities in the company.

49 In contrast, the respondent contends that the Company Culpability Factors should only be considered in the assessment of an officer's liability when the officer's actions *directly* caused the primary offence that had been committed by the company. This would be the case where: (a) the officer is the sole owner and manager of the company, and was effectively the company's "mind and will"; or (b) the officer intentionally caused the company to breach the Part IV Duties or turned a blind eye to safety concerns. While his reasoning is not entirely clear from his submissions, he appears to argue on the authority of *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153 that it is acceptable for an officer to delegate the physical supervision of his employees to a supervisor. Thus, while the officer might remain personally responsible for laying down a *system* for preventing the commission of offences by his employees, he would be entitled to rely upon the default of a supervisor so long as he had taken all reasonable precautions in the selection and training of the supervisor.

Analysis

50 We accept Ms Whang's submission and agree in principle that the court should be entitled to consider the Company Culpability Factors when assessing an officer's culpability. This is because, as Ms Whang rightly argues, there may be situations where an officer's conduct may go towards the culpability of both the officer and his company. For instance, the fact that an officer repeatedly disregarded prior warnings on health and safety risks may be relevant in assessing whether the company's breach of its Part IV Duties was intentional, rash, or negligent. It would also be relevant in assessing the culpability of the officer in so far as it relates to his participation in the company's breach of its duty. In such a scenario, it would be logical to refer to the Company Culpability Factors in assessing the culpability of the officer as the officer would, in truth, have had a substantial and direct role in the commission of the company's underlying offence.

51 Notwithstanding this, we hasten to add that the Company Culpability Factors should be considered in the assessment of the officer's culpability when there is a *direct nexus* between the officer's acts and/or omissions and the company's underlying breach of its Part IV Duty, in the sense that the officer's offending conduct is material to the company's breach of its Part IV Duty. This would likely be the case where: (a) the officer is the *alter ego* of the company; or (b) the officer consents to or connives in the commission of the company's underlying offence. However, we stress that the existence of a direct nexus is a textured question, the resolution of which will depend on all the facts of the case and may also involve a consideration of the following non-exhaustive factors: (a) the extent of the officer's involvement in the underlying breach; and (b) the officer's role in the company.

52 This qualification is necessary because the company's underlying breach of its Part IV Duty may be exacerbated by the actions of other individuals or circumstances which are outside of the officer's control. For instance, Ms Whang submits that an officer who was negligent in the face of numerous or serious breaches of a Part IV Duty by his company would be more culpable than one who had so conducted himself in relation to a lower degree of offending by the company. We accept that it may be possible that even though both officers were *equally* negligent in providing inadequate resources to their employees, one company may nonetheless suffer a more serious breach or more frequent breaches of its Part IV Duties. However, the court should still examine whether the more serious or frequent offences committed by the company were due to circumstances out of the officer's control, such as other employees' further negligence. Otherwise, one officer may be found to be more culpable than the other solely on the basis of the severity of his company's underlying breach when they both tried to prevent the company's commission of a WSHA offence to the *same* extent. This reminder serves to underline the relevance and importance of the need to establish a *direct nexus* between the officer's acts and/or omissions and the company's underlying breach of its Part IV Duty.

53 Furthermore, we observe that even when there is a direct nexus between the company's underlying breach and the officer's acts and/or omissions, the officer's culpability will not necessarily be the same as that of the company. Instead, much will turn on the facts which are peculiar to the officer. Such non-exhaustive factors include the duration of his offending conduct, his role in the company, the motivation for his acts or omissions, and whether any steps were taken to remedy the company's breach.

54 We also observe that the Company Culpability Factors may still serve as an *evidential* tool even where there might not be a direct nexus between the

officer's acts and/or omissions and the company's underlying breach. It follows as a logical matter that the more egregious the company's breach of its Part IV Duty, the more questions will be asked as to how the breaches escaped the detection of the officer in question, which may in turn have a bearing on the ultimate analysis of the officer's culpability.

Summary of the applicable sentencing approach for offences under s 16(1)(b) read with ss 20 and 48(1) of the WSHA

55 Drawing the different strands of the preceding analysis together, we summarise the applicable sentencing approach when sentencing an officer of a company for an offence under s 16(1)(*b*) read with ss 20 and 48(1) of the WSHA.

56 The sentencing court should apply the Two Stage Framework with the *Koh Lian Kok* sentencing benchmarks. At the first stage, the court will determine the level of harm and culpability to arrive at an indicative starting point according to the *Koh Lian Kok* benchmarks:

(a) In assessing the level of harm that arises out of the officer's offence, we agree with the DJ's observation that the level of harm is an objective and unchanging factor which should logically be pegged to the level of harm arising from the company's underlying offence.

(b) In assessing the officer's culpability, the court may have regard to the following factors as enumerated at [22] above:

(i) The officer's role in the company, which includes a consideration of:

(A) whether it was within the officer's primary responsibility to deal with matters of health and safety; and

(B) the extent to which the officer was able to make, or participate in the making of, decisions affecting the company in relation to health and safety.

(ii) The extent of the officer's participation in the company's breach of its Part IV Duty. This includes a consideration of:

(A) the officer's mental state and whether there were any relevant prior warnings or circumstances indicating a risk to workplace safety and health;

(B) whether the officer took steps in connection with the offence, such as attempting to conceal the wrongdoing;

(C) whether the officer made any effort to find out what he was required to do in terms of health and safety; and

(D) the extent to which the officer was involved in the actual commission of the offence.

(iii) The officer's duration of offending.

(iv) Whether the officer's offending conduct was motivated by financial gain or the avoidance of costs.

(c) The court is entitled to consider the Company Culpability Factors in its analysis of the officer's culpability when there is a direct nexus between the officer's acts and/or omissions and his company's

underlying breach of its Part IV Duty. The existence of a direct nexus depends on all the facts of the case and may involve a consideration of the following non-exhaustive factors: (a) the extent of the officer's involvement in the underlying breach; and (b) the officer's role in the company. The Company Culpability Factors may also play an evidential role even in the absence of a direct nexus; the presence of egregious breaches of a company's Part IV Duty may give rise to the inference that the officer was aware of the breaches, which may have a bearing on his culpability.

(d) The officer's culpability should be assessed independently and is not automatically pegged to his company's level of culpability for its underlying breach of its Part IV Duty.

57 Under the second stage, the court may calibrate the indicative starting sentence according to the offender-specific aggravating and mitigating factors as recognised at [79(e)]–[79(f)] of *Koh Lian Kok*.

Issue 2: Whether the DJ had correctly assessed the respondent's culpability to be low

58 Having established the applicable sentencing principles for the present offence, we now consider the Prosecution's substantive appeal. The Prosecution seeks to impugn the DJ's finding that the respondent's culpability was "low" on three fronts. It advances the following submissions:

(a) The DJ erred in finding that the respondent had not fostered a culture of indifference to safety in the Company.

(b) The DJ erred in classifying the respondent's offence as one of negligence. The respondent purportedly knew that the Company's work

procedure was flawed but did nothing to change it. In this connection, the Prosecution also argues that the DJ placed undue mitigating weight on various measures that the respondent had adopted to check for and prevent defective materials from being supplied.

(c) The DJ failed to adequately consider the respondent's cavalier attitude towards ensuring that his employees were properly trained.

59 We address each contention in turn.

(a) Whether the respondent fostered a culture of indifference to safety in the company

60 First, the Prosecution argues that in sentencing the respondent, the DJ erred in finding that the respondent had not fostered a culture of indifference to safety consciousness. The Prosecution submits that this conclusion is at odds with the fact that the DJ had earlier found, in convicting the respondent and the Company of their respective charges, that there was an operative culture of "trust" in the Company which the respondent had condoned. For context, this refers to a purported culture of blind trust where the Company's workers certified that formwork materials were of adequate quality, without conducting a second round of quality checks as mandated by the Company's SOP because they "trusted" that their colleague had adequately conducted a first round of checks. The Prosecution also submits that the respondent's testimony purportedly showed that he had condoned a culture of blind trust amongst the employees, which led to the employees deviating from the prevailing work procedure.

61 We do not accept this submission. Although the Prosecution asserted otherwise, there was no evidence in the trial below to suggest that the

respondent had fostered a culture of "blind trust" and indifference to safety in the Company. The Prosecution pointed to certain portions of the respondent's cross-examination to suggest that he conceded that such a culture of trust was an "accepted procedure" in the Company. However, these extracts must be read in context. It is clear from the following excerpt that the respondent did not state that the Company had a culture of blind trust amongst its employees. Instead, the respondent clarified that what he meant when he said that he had "trust" in his workers was that besides trusting his staff, he also expected them to follow the established procedures when they were working. He clearly stated that his employees could not simply rely on blind trust:

> Q: Just so that I follow your evidence, Mr Yeo, you are telling this Court that [it] is an accepted practice within Formwork Hire for a delivery order to be stamped based on trust between colleagues?
>
> A: I did not say it's a[n] accepted procedure, alright? So, I disagree on that.
>
> Q: So, therefore, it is not an accepted procedure. You agree?
>
> A: I disagree.
>
> Q: Mr Yeo, I am having difficulties following your evidence. On one hand, you disagree that it is an accepted procedure … And on the other hand, you also disagree that it is not the practice.
>
> A: Because I believe Shang Feng have communicated very clearly with Liu Si Bo. So, there must be something they communicat[ed] during that time before he affixed the stamp to take responsibility on this material to be delivered.
>
> …
>
> Q: … So, therefore, my question again is, Mr Yeo: Is the practice of relying on trust of colleagues an accepted practice in Formwork Hire? That's my question.
>
> A: First, trust is a very important culture in our company. Even though he stamped this, alright, after consulting, if he have consulting with Liu Si Bo, we also maintain that we do not deliver defective parts to the site. There

> is no complaint or reject, also, from Precise, on this particular Jalan Buroh. …
>
> …
>
> Q: Mr Yeo, when we last left, I had asked you about the trust that you had in your design team, which included the HOD, Huang Jiang, as well as Ren Yan, that they have sent a good mix for testing. And you said, "Yes, I trusted." And after that, once PW3, Mr Adrian Choo, had inspected---or his team had inspected the materials that had been returned from the worksites and sorted them out, they will be sent for painting. *You also trust that this process of sorting out the different formwork structures and spigots were done in a proper manner. Was this based on trust as well, Mr Yeo?*
>
> A: No, you could not simply---*the trust is more meant more on trust on my staff, alright?* But of course, if they are working, we also have to be---the manner, the---I mean, *this procedure they have to follow the team, not just simply trust everything. No, I don't think so.*
>
> [emphasis added]

62 It is an inevitable reality that directors of organisations repose some level of "trust" in their staff and presumptively believe that their workers, who have been entrusted to conduct certain work processes, will do so in accordance with established procedures. However, the mere fact that the respondent trusted his employees to perform their tasks in accordance with established procedures does not necessarily mean that he would have found it permissible for his workers to accept formwork materials on the basis of *blind* trust, without checks being done. As such, we reject this argument as the evidence which the Prosecution relies upon does not suggest that the respondent had condoned a culture of *blind* trust within the Company.

63 For completeness, we observe that the DJ had previously stated in his conviction judgment that the respondent had condoned an employee's attitude of "trust" towards the discharge of his "checking duties": *Judgment (Conviction)* at [51(d)]. However, this does not take the Prosecution far as the

DJ ultimately referred to the same excerpts of the trial, which we cited above, to support his finding. As stated earlier, we do not think that the excerpts support such a finding.

(b) Whether the Company's SOP was ineffective

64 Next, the Prosecution submits that the respondent *knew* that the Company's system of checks, which required formwork materials to be painted between two rounds of visual checks (the "Two Check System"), was inherently ineffective as the layer of paint would have compromised the workers' ability to visually detect defects in the materials during the second visual check. According to the Prosecution, the respondent did nothing to remedy this defective SOP and the DJ failed to adequately consider: (a) the permissive attitude of the respondent towards the defects within the SOP; and (b) the fact that the SOP was ineffective.

65 In relation to the first argument, the Prosecution submits that the respondent could not merely have been negligent in failing to identify the defect in the SOP since the respondent would have maintained close oversight over the work conducted in the Company; he would personally walk around the yard every week to identify items which were not in order. As such, he would have been able to discern the fundamental flaw in the work procedure as he would have seen the appearance of the materials before and after they had been painted.

66 In our judgment, this is speculative as it presumes that the respondent would have subjectively drawn the relevant inference and identified that the SOP was unsatisfactory. Furthermore, it is significant that the DJ had concluded that the state of the evidence adduced at the trial was such that it was unclear whether the defects in the materials were so obvious that a reasonable person

would have paused and considered the matter and would not have ignored it, or whether the defects were within the subjective consciousness of the Company's workers: see *Judgment (Sentencing)* at [15(d)(iv)]. This coheres with the respondent's evidence at the trial that he: (a) did not think that the layers of paint would render major defects undetectable on visual examination; and (b) did not visually identify any corrosion on the formwork materials when he walked around the yard. In our view, the Prosecution has not pointed to sufficient evidence to suggest that the respondent *was aware* that the Company's work procedure was flawed.

67 We next address the Prosecution's second argument, *ie*, that the SOP was ineffective. In our view, the Prosecution is precluded from pursuing this point on appeal. During the hearing before us, the Prosecution conceded that the allegation that the painting of the formwork materials rendered the Company's Two Check System ineffective was never put to the respondent in the trial below. In fact, the Prosecution pursued a different case theory at the trial, in that the formwork materials had deliberately been painted over to *conceal* the existence of such defects. That case theory was rejected by the DJ: see *Judgment (Sentencing)* at [15(d)]. As such, the present submission falls squarely within the principle in *Browne v Dunn* (1893) 6 R 67. If a submission is to be made about a witness or the evidence given by the witness which is of such a nature and of such importance that it ought fairly to have been put to the witness to give him the opportunity to meet that submission, to counter it or to explain himself, then if it has not been so put, the party concerned will not be allowed to make that submission: *Harven a/l Segar v Public Prosecutor* [2017] 1 SLR 771 at [66].

(c) Whether the respondent provided inadequate training to his workers

68 The Prosecution is similarly precluded from pursuing its final submission that the respondent had failed to provide adequate training for the Company's staff. The Prosecution contends that the DJ failed to consider this factor in the assessment of the respondent's culpability. In this context, the Prosecution submits that the Company's workers did not receive any formal training on how to: (a) identify defects in the formwork materials; and (b) assess which formwork materials should be repaired and which should be scrapped. Instead, the workers learnt how to make such assessments on the job, through visual inspections with no other guidance from the Company. We collectively refer to these allegations as the "Allegation". The respondent submits that the Allegation was never put to the respondent in the trial.

69 In our view, there is some merit in the respondent's submission. While the Allegation was raised during the cross-examination of Mr Loi Chee Ming, who was the Company's assistant manager in the logistics and production department and was tasked with conducting quality checks on the formwork materials, the Allegation was never squarely put to the *respondent* in the trial below. As such, we invited the parties to submit on the issue of whether the Allegation had been put to the respondent and, in any event, whether the Prosecution was entitled to rely on the Allegation in the present appeal.

70 In its further submissions, the Prosecution conceded that it had not put the Allegation to the respondent. However, it submitted that the respondent nonetheless had fair notice for the following reasons: (a) the Prosecution had set out its case that there was no written procedure for quality checks on the formwork materials in the Statement of Undisputed Facts Between the Prosecution and Defence (the "Statement of Undisputed Facts") in the

proceedings below; and (b) the Prosecution had alluded to the fact that the Company's workers were not given guidelines to conduct visual checks on the formwork materials during the respondent's cross-examination.

71 In reply, the respondent submits that the Allegation was never raised in the Prosecution's petition of appeal. Furthermore, while the Prosecution stated its position in the Statement of Undisputed Facts, this was listed within the "Disputed Facts" section of the document, and that aspect of their case was ultimately not put to the respondent during the trial. The Prosecution's questions at the trial were also directed at the effectiveness of the Company's *procedure* for checking the quality of the formwork materials, and not the adequacy of the Company's training programme.

72 We accept that the Prosecution did contend, in the "Disputed Facts" section of the Statement of Undisputed Facts, that "there was no written procedure for maintenance or quality checks on the formwork materials, and such procedures were based on the supervisors/workers experience when doing the visual checks." However, this falls short of an allegation that such training practices were *insufficient*, which is the crux of the Allegation.

73 More importantly, the respondent did not have notice of the Allegation during his cross-examination. The Prosecution argues, based on certain extracts of the respondent's cross-examination, that it had clarified its case to the respondent as it had stated that it wished to understand "how [corrosion] is identified" and what the relevant considerations were before formwork materials were sent for further tests. However, this statement was made during a line of questioning which was meant to determine the *scope* of the Company's visual checks so that the Prosecution could establish the inadequacy of visual checks as a means of identifying defective formwork materials. This is

conceptually distinct from the issue of whether the Company had provided adequate training to its workers. The Prosecution did not suggest that it sought to impugn the *training* practices within the Company. This is evident from the *full* context of the excerpt which the Prosecution has relied on, which is reproduced below:

> Q: Yes, Mr Yeo, and that's exactly why I was thinking that *visually, it will not be easy to identify defects such as corrosion if it's on the inside part of the frames as compared to the outside. You agree with that?* Just visually, Mr Yeo. Just---from what you can see, not with the use of any equipment.
>
> A: Yes, but external corrosion is more important as it's less in the internal. …
>
> Q: You also mentioned, Mr Yeo, about the laboratory people. It's for them to look at the whole frame. Was this---was this the case for Formwork Hire? *Was this sent to any laboratory people to look?*
>
> …
>
> Q: I'm asking you this, Mr Yeo, is because from your own evidence, the life cycle of a typical frame is about 5 years. And in 5 years, there could be corrosion that could have been built up on the inside part. So, that's why I'm asking whether it would be reasonable to have this checked for corrosion on the inside as well.
>
> …
>
> Lee: Your Honour, I have to object to this line of questioning because what the prosecution's case---I mean, this is I'm talking about totally literally what the prosecution's case is on evidence. The corrosion, right through, Matcor report---unless my learned friend can show me otherwise, alright, has been there's corrosion outside, pitting and then goes into the corrosion on the inside. …
>
> Court: Mr Singh, can you clarify?

> [Mr Singh]: Yes, Your Honour. Your Honour, my question is to understand the degree of checks that were conducted by the company. If corrosion is identified, I'm seeking to understand how it is identified, what is considered before it is sent for any further checks, if there were any further checks. Therefore, Your Honour, *I have to be able to appreciate the checks done, not just on the exterior of the frames but also to understand anything more that was or was not done. …*
>
> [emphasis added]

74 The Prosecution also argues that while it had called into question the efficacy of the Company's practice of conducting visual checks of the formwork materials, the respondent's answers were "sufficiently revealing of a lack of guidelines to conduct the visual checks" as the respondent drew a distinction between "major" and "minor" defects. According to the Prosecution, the classification of such defects was based on arbitrary judgment calls and would thus have put the Allegation in issue. With respect, this submission is hard to follow. As stated earlier, there is a difference between: (a) the adequacy of visual checks as a method of detecting defects in the formwork materials; and (b) the adequacy of the Company's *training* programme. As the Prosecution's allegation regarding the inadequacy of the Company's training programme was never seriously pursued in the trial below, and was never put to the respondent, in our judgment, the Prosecution is precluded from pursuing this submission in the present appeal.

75 We conclude with two observations regarding the Prosecution's submission. First, we observe that the Prosecution did not lead expert or factual evidence to establish what an adequate *training* programme should entail. Based on a perusal of the Prosecution's submissions at first instance, this is presumably because the Prosecution's case at the trial was focused on the inadequacy of the visual checks to detect corrosion on the formwork materials. The Prosecution

advanced this argument so that it could establish that the formwork materials which the Company had supplied to the Worksite already contained defects when they were delivered. As such, there was no reason for the Prosecution to adduce evidence which related to the Company's training programme during the trial. In the absence of any relevant evidence as to the standards which should be expected of a training programme, the court is ill-placed to assess the effectiveness of the Company's training programme.

76 Second, and as rightly pointed out by the respondent, the Prosecution did not raise the Allegation in its petition of appeal. Thus, the Prosecution would not have been entitled to rely on this ground of appeal except with the permission of this court, which it did not seek to obtain: see s 378(6) of the Criminal Procedure Code 2010 (2020 Rev Ed).

Conclusion

77 As the Prosecution's arguments on appeal are either unsupported by the evidence or were never put to the respondent in the trial below, there is no basis for this court to disturb the DJ's finding that the respondent's culpability was low. We thus dismiss the appeal.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Vincent Hoong
Judge of the High Court

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