IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 119

Criminal Reference No 3 of 2020

Between

Public Prosecutor

… *Applicant*

And

(1) Takaaki Masui
(2) Katsutoshi Ishibe

… *Respondents*

Criminal Motion No 1 of 2021

Between

Katsutoshi Ishibe

… *Applicant*

And

Public Prosecutor

… *Respondent*

Criminal Motion No 2 of 2021

Between

Takaaki Masui

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Statutory offences] — [Prevention of Corruption Act]
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v
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[2021] SGCA 119

Court of Appeal — Criminal Reference No 3 of 2020 and Criminal Motions Nos 1 and 2 of 2021
Sundaresh Menon CJ, Tay Yong Kwang JCA and Steven Chong JCA
6 July 2021

30 December 2021 Judgment reserved.

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

Introduction

1 CA/CRF 3/2020 ("CRF 3") is the Prosecution's application under s 397(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") to refer a question of law of public interest to the Court of Appeal. CA/CM 1/2021 ("CM 1") and CA/CM 2/2021 ("CM 2") are criminal motions filed by Katsutoshi Ishibe ("Ishibe") and Takaaki Masui ("Masui") respectively to seek leave under s 397(1) of the CPC to refer several purported questions of law of public interest to the Court of Appeal.

2 After hearing the parties on 6 July 2021, we reserved judgment in CRF 3 and dismissed CM 1 and CM 2. At the core of CRF 3 lies an interesting question as to whether a court, in deciding on the amount of a penalty to be imposed under s 13(1) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed)

("PCA"), should take into account the amount of the gratification that has been returned or repaid by the corrupt recipient or otherwise disgorged from him, whether voluntarily or otherwise. The court below answered this question in the negative, thereby departing in substance from another decision of the High Court in *Public Prosecutor v Marzuki bin Ahmad and another appeal* [2014] 4 SLR 623 ("*Marzuki*"). In addressing this question, it is crucial to ascertain the underlying objective of s 13(1) of the PCA – namely, whether it is intended to be a form of punishment or a means of disgorgement. That is key to a proper understanding of the provision.

3 In this judgment, we answer the question framed in CRF 3 and elaborate on our reasons for dismissing the two criminal motions. We begin by setting out the relevant background facts.

Background facts

4 Ishibe and Masui are Japanese nationals. They were senior employees of Nissho Iwai Corporation ("Nissho Japan"), which merged with another company in April 2004 to form Sojitz Corporation ("Sojitz Japan"). In the course of their employment, they were seconded to Singapore to work for Nissho Iwai International (Singapore) Ltd ("Nissho Singapore"), which was renamed Sojitz Asia Pte Ltd ("Sojitz Singapore") after the said merger. Nissho Singapore and Sojitz Singapore are the Singaporean subsidiaries of Nissho Japan and Sojitz Japan respectively. In this judgment, we refer to Nissho Singapore and/or Sojitz Singapore as "the Singaporean Company", to Nissho Japan and/or Sojitz Japan as "the Japanese Company", and to Masui's and Ishibe's employer as "Sojitz" generally.

5 The Japanese Company is a trading company dealing in various commodities. One of its businesses is the supply of edible and industrial flour through the Singaporean Company. Chia Lee & Co ("Chia Lee"), a sole proprietorship owned by Koh Pee Chiang ("Koh"), was the sole distributor of edible flour for the Singaporean Company between 1978 and 2002. Ishibe and Masui were responsible for setting the selling price of the edible flour, informing Koh of the market price and negotiating with Koh in relation to the edible flour business.

6 The Singaporean Company's industrial flour distributor, on the other hand, was a company known as Sin Heng Chan. When Sin Heng Chan encountered financial difficulties in 2002, Sojitz searched for an alternative industrial flour distributor for the Singaporean Company. In mid-2002, Ishibe approached Koh and asked him to take over the industrial flour distributorship from Sin Heng Chan as a "favour". Koh was thoroughly unfamiliar with the industrial flour business, which operated completely differently from his mainstay, the edible flour business. Despite his misgivings, Koh reluctantly agreed as he feared that his refusal to co-operate would spell the end of Chia Lee's exclusive distributorship of edible flour for the Singaporean Company. Chia Lee was thus appointed to replace Sin Heng Chan as the industrial flour distributor for the Singaporean Company.

7 It was undisputed that Koh, Ishibe and Masui entered into an arrangement to share the profits earned by Chia Lee from its industrial flour business ("the profit-sharing arrangement"). Ishibe and Masui received the lion's share of the profits under this arrangement. At the material time, the expected profit from the industrial flour business was US$23 per metric ton of industrial flour. It was agreed that Koh would receive US$3 per metric ton of industrial flour sold to cover his "administration costs" while the remaining

US$20 per metric ton of industrial flour sold would be handed over to Masui, to be shared equally with Ishibe. Between February 2004 and November 2007, Koh made 28 distinct payments to Masui, which Masui in turn shared with Ishibe.

8 The profit-sharing arrangement was, in fact, a loss-making enterprise for Koh. From the outset, the US$3 that he received per metric ton of industrial flour sold barely covered the costs of running the industrial flour business. As the industrial flour business flourished, Koh's paltry share of the profits under the profit-sharing arrangement fell far short of what was needed to cover Chia Lee's ballooning tax liability. When Koh sought to halt the profit-sharing arrangement, Ishibe and Masui threatened "not [to] continue to support and protect [him] anymore". Koh understood this to mean that they would undercut Chia Lee's edible flour business by appointing other distributors or by selling edible flour directly to Chia Lee's customers. He therefore felt that he had no choice but to continue running the industrial flour business or risk having Chia Lee's edible flour business adversely affected.

9 By June 2005, it was clear that Chia Lee was under considerable financial strain. When Chia Lee's customer, Chao Shun Trading ("Chao Shun"), defaulted on payments totalling US$326,007, Masui transferred US$240,000 via Chia Lee to Koh on 15 June 2005. The nature of this transfer was disputed at the trial. Ishibe and Masui argued that the transfer had been made pursuant to their agreement with Koh that they would personally bear the risks of the industrial flour business. In contrast, the Prosecution claimed that the payment was meant to keep Chia Lee afloat to sustain Ishibe's and Masui's corrupt scheme.

10 Despite Chia Lee's increasingly parlous financial situation, Koh continued participating in the profit-sharing arrangement all the way until November 2007, when he ran out of money to pay Masui and Ishibe. The profit-sharing arrangement was discovered by Sojitz Japan in late 2009, when it obtained control of Chia Lee's accounts.

11 Ishibe and Masui each claimed trial to 28 charges under s 6(*a*) read with s 29(*a*) of the PCA for conspiring with each other to corruptly obtain gratification from Koh as inducements for doing acts in relation to the Singaporean Company's affairs, namely, furthering Chia Lee's business interests with the Singaporean Company. They were alleged to have received a total gratification sum of $2,051,402 from Koh. The first charge against Masui read as follows:

> You,
>
> …
>
> are charged that you, between 2002 and 2007, in Singapore, being an agent of [Nissho Singapore], did abet by engaging in a conspiracy with [Ishibe] to corruptly obtain from [Koh], trading as Chia Lee … gratification as an inducement for doing acts in relation to your principal's affairs, to wit, by assisting Chia Lee to advance its business interest with [Nissho Singapore], and in pursuance of the conspiracy and in order to the doing of that thing, an act took place, to wit, sometime in February 2004, you did receive $71,773 from the said [Koh], which act was committed in consequence of your abetment and you have thereby committed an offence punishable under Section 6(a) r/w Section 29(a) of the Prevention of Corruption Act, Chapter 241.

The remaining 27 charges against Masui were similarly framed, save for: (a) the name of Masui's/Ishibe's principal, which was either Nissho Singapore or Sojitz Singapore; (b) the date on which the gratification was allegedly received; and (c) the amount of the gratification allegedly received. Ishibe faced the same

28 charges, except that Masui was always named as the recipient of the gratification given by Koh.

12 Ishibe and Masui accepted that they did receive payments from Koh pursuant to the profit-sharing arrangement, although they disputed the exact amounts received. The central contention at the trial was the true character of the profit-sharing arrangement. Relying primarily on Koh's evidence, the Prosecution argued that his payments to Masui and Ishibe were bribes to ensure their continued support for and protection of Chia Lee's longstanding edible flour distributorship with the Singaporean Company. Ishibe and Masui, on the other hand, claimed that the payments they had received from Koh were not inducements or rewards for advancing Chia Lee's business interests, but compensation for underwriting the huge risks of the industrial flour business.

13 The District Judge found that Masui and Ishibe had received the payments from Koh in exchange for their continued support for and protection of Chia Lee's edible flour business (see *Public Prosecutor v Katsutoshi Ishibe and another* [2018] SGDC 239 ("the District Judge's Judgment") at [64]). Accordingly, he convicted Masui and Ishibe on all charges. He imposed a sentence of between 12 and 18 months' imprisonment per charge, based on the amount of the gratification stated in each charge (see the District Judge's Judgment at [123]–[124]). He further ordered that the sentences for four charges were to run consecutively, thereby resulting in an aggregate sentence of 66 months' imprisonment for Ishibe and Masui each (see the District Judge's Judgment at [127]). Pursuant to s 13 of the PCA, the District Judge also ordered that they each pay a penalty of $1,025,701 (being half of the total gratification sum of $2,051,402) or serve an imprisonment term of six months in default of payment (see the District Judge's Judgment at [132]).

14 Ishibe and Masui appealed against their convictions and sentences. In *Takaaki Masui v Public Prosecutor and another appeal and other matters* [2021] 4 SLR 160 ("the HC Judgment"), the High Court judge ("the Judge") dismissed the appeals against conviction but allowed the appeals against sentence. The bulk of the HC Judgment was devoted to an elaborate 3D sentencing framework for offences under ss 6(*a*) and 6(*b*) of the PCA. Based on this sentencing framework, the Judge reduced Ishibe's and Masui's sentences to 43 months and three weeks' imprisonment and a fine of $200,944 (see the HC Judgment at [315]). The Judge also amended the gratification amount reflected in two of the charges, namely, C21 and C25. The amount stated in C21 was reduced from $102,115 to $86,275 while the amount stated in C25 was reduced from $137,340 to $111,211 (see the HC Judgment at [9] and [55]). The total gratification sum was thus reduced from $2,051,402 to $2,009,433 (see the HC Judgment at [9] and [56]).

15 Although the sentencing framework devised by the Judge was not an issue before us, we caution that excessively complex or technical sentencing frameworks are prone to cause confusion and uncertainty, which are the very antithesis of a sound sentencing framework. As we previously observed in *Mohd Akebal s/o Ghulam Jilani v Public Prosecutor and another appeal* [2020] 1 SLR 266 at [20(b)], sentencing benchmarks are never intended to achieve mathematically precise sentences. We therefore do not endorse the Judge's sentencing framework, which is as complex as it is likely to be of little assistance to sentencing courts. In laying down a sentencing framework, the court should introduce only "as much complexity as [is] necessary to make [the framework] theoretically just without making it either incomprehensible or too intricate for practical application" (see John Bernard Corr, "Supreme Court

Doctrine in the Trenches: The Case of Collateral Estoppel" (1985) 27 Wm & Mary L Rev 35 at 85).

16 As for the penalty imposed under s 13 of the PCA, Masui and Ishibe urged the Judge to deduct the following sums from the total gratification sum of $2,009,433 and, therefore, from the penalty imposed on each of them:

(a) the sum of $200,000 paid to Sojitz Singapore in full and final settlement of the judgment sum awarded by a Japanese civil court against Ishibe and Masui;

(b) the sum of US$240,000 transferred by Masui to Koh in June 2005 (see [9] above); and

(c) the sums of $33,322.20 and US$138,152.48 (approximately $171,309.07 based on the exchange rate then) that were recovered by the authorities from Masui's frozen bank accounts.

17 Relying on *Marzuki* at [71], Masui and Ishibe submitted that s 13 of the PCA was intended to prevent corrupt recipients from retaining their ill-gotten gains and was not meant to function as an additional punitive measure.

18 The Judge rejected that submission. He held that where the gratification was "a sum of money" (by which he meant an outright *gift* of money), the court *had* to impose a penalty of a sum equal to the amount of the gratification and had no discretion to take into account the fact that part or all of that gratification might have been repaid or disgorged (see the HC Judgment at [326] and [336]). It was only in cases where the gratification "did not take the form of a sum of money (*eg*, a loan or a service)" that the court had the "limited discretion" to determine the value of that gratification (see the HC Judgment at [326]).

19 On the facts, the Judge held that Koh's payments to Ishibe and Masui were outright gifts of money and that he was thus obliged to impose a penalty of a sum equivalent to the total gratification sum (see the HC Judgment at [336]). As the total gratification sum was reduced from $2,051,402 to $2,009,433, the Judge accordingly reduced the penalty imposed on Ishibe and Masui to $1,004,716.50 each (see the HC Judgment at [337] and [340]). Adding the fine of $200,944 and the penalty of $1,004,716.50, the Judge imposed a recomputed sentence of 12 months' imprisonment in default of payment of the aggregate sum of $1,205,660.50 (see the HC Judgment at [340]–[341]).

20 Following the Judge's decision, the Prosecution filed CRF 3 while Ishibe and Masui filed CM 1 and CM 2 respectively.

CM 1 and CM 2

The law on offences under s 6(a) of the PCA

21 Having set out the relevant factual background, we now provide our detailed reasons for dismissing CM 1 and CM 2. As some of the questions raised in these two criminal motions pertained to the elements of an offence under s 6(*a*) of the PCA, we first set out the legal context to those questions by providing an overview of the law as regards that provision.

22 Section 6(*a*) of the PCA provides as follows:

> **Punishment for corrupt transactions with agents**
>
> **6.** If —
>
> (*a*) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or

> forbearing to show favour or disfavour to any person in relation to his principal's affairs or business …

23 It is well established that an offence under s 6(*a*) of the PCA comprises the following four elements (see *Tey Tsun Hang v Public Prosecutor* [2014] 2 SLR 1189 ("*Tey Tsun Hang*") at [12]):

(a) acceptance of gratification;

(b) as an inducement or reward (for any act, favour or disfavour to any person in relation to the recipient's principal's affairs or business);

(c) an objectively corrupt element in the transaction; and

(d) acceptance of the gratification by the recipient with guilty knowledge.

24 The first element concerns the *actus reus* of the offence while the second to fourth elements relate to the requisite *mens rea* (see *Tey Tsun Hang* at [13] and [15]).

25 The second element pertains to the causal link between the gratification and the act that the gratification was intended to procure, while the third element is concerned with whether that act was objectively dishonest in the entire transaction (see *Tey Tsun Hang* at [16]). Although the second and third elements are conceptually different, they are part of the same factual inquiry. The courts have thus examined these two elements concurrently when assessing whether an offence under s 6(*a*) of the PCA has been made out. The overriding question is whether the recipient received the gratification believing that it was given to him as a *quid pro quo* for conferring a dishonest gain or advantage on the giver in relation to the affairs of the recipient's principal (see *Tey Tsun Hang* at [17]).

The purported questions of law

26 CM 1 is Ishibe's application for leave to refer the following three purported questions of law of public interest to the Court of Appeal:

(a) Question 1:

> Where an agent requests a third party to assist as an intermediary in a profit-making scheme conceived by the agent for the agent's own benefit and the profits generated by the scheme are not causally connected to the acts done by the agent in relation to his principal's affairs, do the profits constitute 'gratification' for the purposes of s 6(a) of the [PCA]?
>
> (referred to hereafter as "the Gratification Question")

(b) Question 2:

> For the purposes of s 6(a) of the PCA, does the 'act' done by the agent 'in relation to his principal's affairs' need to either confer a dishonest benefit or advantage on the third party or be at the expense of the interests of the agent's principal?
>
> (referred to hereafter as "the Act Question")

(c) Question 3:

> In a Magistrate's Appeal, does the High Court have a duty to address the grounds of appeal raised in the Petition of Appeal and/or Appellant's written submissions and give independent reasons for rejecting or dismissing them?

27 In his written submissions, Ishibe's counsel, Mr Abraham S Vergis SC ("Mr Vergis"), sought to amend Question 3 as follows:

> In a Magistrate's Appeal, does the High Court have a duty to address the grounds of appeal raised in the Petition of Appeal and/or Appellant's written submissions and give independent reasons for rejecting or dismissing them *wherever it is contended that the lower court had completely failed to take into consideration evidence that goes towards a material element of the charge*? [emphasis added]

28 In CM 2, Masui sought leave to refer the following three purported questions of law of public interest to the Court of Appeal:

(a) Question 1:

> a. Whether the Honourable District Judge Shaiffudin bin Saruwan ('the Trial Judge'), in his judgment recorded as *Public Prosecutor v Katsutoshi Ishibe and anor* [2018] SGDC 239, fulfilled his judicial duty to give reasoned decisions even though he
>
> > i. Adopted the Prosecution's submissions without analysing the evidence in totality, as particularised at [2] in the table annexed to [the Notice of Motion];
> >
> > ii. Simply rejected [Masui's] evidence without providing reasons, and as such [Masui] is not aware why he lost;
> >
> > iii. Appeared to arbitrarily prefer the [Prosecution's] submissions over that of the Defence, despite the [Prosecution's] submissions being internally inconsistent, as particularised at [1] in the table annexed to [the Notice of Motion]; and
> >
> > iv. Appeared to ignore both parties' submissions despite clear and inconvertible [*sic*] evidence, as particularised at [1] in the table annexed to [the Notice of Motion].

(b) Question 2:

> b. Consequently, whether there was a breach of judicial duty to give reasoned decisions when the Honourable Justice Chan Seng Onn ('the Appeal Judge'), in his judgment recorded as *Takaaki Masui v Public Prosecutor and another appeal* [2020] SGHC 265,
>
> > i. Simply upheld the Trial Judge's decision on conviction without giving any further reasoning; and
> >
> > ii. Did not appear to apply his mind to [Masui's] submissions on the issue of the Trial Judge substantially copying the [Prosecution's] closing submissions,

(c) Question 3:

> c. Whether, in a case where the accused is the recipient, the giver must have a reasonable basis for believing that it was a

> *quid pro quo* for the recipient to confer a dishonest gain or advantage on the giver in relation to his principal's affairs, in order to make out an offence under section 6(a) of the [PCA].
>
> (referred to hereafter as "the Reasonable Basis Question")

We refer to Ishibe's Question 3 (in both its original and amended forms) and Masui's Questions 1 and 2 collectively as "the Reasons Questions".

Our decision

29 The Court of Appeal will only grant a party leave under s 397(1) of the CPC to bring a criminal reference if the following four conditions are satisfied (see *Mohammad Faizal bin Sabtu and another v Public Prosecutor and another matter* [2013] 2 SLR 141 at [15]):

(a) First, the reference to the Court of Appeal can only be made in relation to a criminal matter decided by the High Court in the exercise of its appellate or revisionary jurisdiction.

(b) Second, the reference must relate to a question of law, and that question of law must be one of public interest.

(c) Third, the question of law must have arisen from the case which was before the High Court.

(d) Fourth, the determination of the question of law by the High Court must have affected the outcome of the case.

30 In our judgment, the questions raised in CM 1 and CM 2 plainly failed to satisfy these conditions.

The Gratification Question

31 Turning first to the Gratification Question, Mr Vergis challenged the existence of a "*quid pro quo* between the gift received by [Ishibe and Masui], and the dishonest benefit conferred on [Chia Lee] at [Sojitz's] expense". He stressed that Ishibe and Masui had not protected and supported Chia Lee's edible flour distributorship in a way that conferred an unjust benefit on Chia Lee, and that the payments they had received therefore bore no causal connection to any act they had done in relation to the Singaporean Company's affairs.

32 Despite Mr Vergis's attempt to characterise the Gratification Question as a question of law, it was clear to us that the real inquiry embodied in that question was whether Koh's payments to Ishibe and Masui were objectively corrupt. This was, as the Prosecution noted, a quintessential question of fact (see *Tey Tsun Hang* at [17]–[18]; *Yusof bin A Samad v Public Prosecutor* [2000] 3 SLR(R) 115 ("*Yusof*") at [38]). The District Judge found that Ishibe and Masui had received the payments from Koh as a *quid pro quo* for their continued support for and protection of Chia Lee's edible flour business (see the District Judge's Judgment at [64]), and this factual finding was affirmed by the Judge (see the HC Judgment at [12]). The Gratification Question was, in truth, a challenge to the Judge's decision to uphold the District Judge's finding of *fact*; it could not masquerade as a question of law.

33 At the hearing, Mr Vergis sought to impress upon us the distinction between: (a) the profits under the profit-sharing arrangement, which Koh had collected and paid to Masui and Ishibe; and (b) Koh's use of Chia Lee as a front for Masui's and Ishibe's illicit industrial flour business, and his collection of the profits therefrom on Masui's and Ishibe's behalf. Put simply, he argued that the

charges had wrongly stated Koh's *payments* to Masui and Ishibe, instead of the *services* rendered by Koh to them, as the relevant gratification, and that the District Judge and the Judge had failed to identify this error.

34 It seemed to us, however, that Mr Vergis was doing little more than splitting hairs. First, the whole objective of the profit-sharing arrangement was for Masui and Ishibe to profit monetarily. When pressed on what he regarded as the purpose of the profit-sharing arrangement, Mr Vergis demurred. Second, the profits obtained by Masui and Ishibe were a proxy for the value of the services rendered by Koh. For each metric ton of industrial flour sold, Masui and Ishibe retained US$20 of the expected profit of US$23 (see [7] above). In other words, the profits were derivative of the volume of industrial flour sold and, in turn, of the value of the services rendered by Koh to Masui and Ishibe. Consequently, whether the relevant gratification was Koh's payments to Masui and Ishibe or Koh's services to them was immaterial and would not have affected the outcome of the case.

35 Third, the objection to how the Prosecution had particularised the charges was never raised before the District Judge and the Judge. Fourth, and in any event, it was the Prosecution's prerogative to particularise the charges as it deemed fit. If the court was not satisfied that the charges against Masui and Ishibe, as framed by the Prosecution, were made out, it would simply acquit them. It was impermissible for Ishibe to seek leave to file a criminal reference to challenge the way in which the Prosecution had particularised the charges.

36 Fine-grained distinctions aside, the Gratification Question was also destined to fail as it was not a question of law of *public interest*. Instead, it was a question that could readily be resolved by applying established legal principles (see *James Raj s/o Arokiasamy v Public Prosecutor* [2014] 3 SLR 750 ("*James*

Raj") at [28]). The "causal connection" between the gratification in question and the act that the gratification was intended to procure or reward relates to the second element of an offence under s 6(*a*) of the PCA, namely, whether the gratification was accepted as an inducement or reward (see *Tey Tsun Hang* at [16]). Where there is no such causal link, an offence under s 6(*a*) of the PCA will evidently not be made out as the Prosecution would have failed to establish the element of inducement or reward. That said, the absence of a causal link between the profits received by an agent and the act that the profits were intended to procure or reward has no bearing on whether the profits constitute "gratification", which is statutorily defined in s 2 of the PCA. There was thus no open controversy that called for our resolution in answering the Gratification Question, and we declined to grant leave.

The Act Question

37 The Act Question was similarly bereft of any merit. We begin by observing that this question was seemingly directed at the second element of an offence under s 6(*a*) of the PCA (see [23(b)] above). On closer scrutiny, however, the substance of the Act Question was whether the *third* element of an offence under s 6(*a*) of the PCA had been made out *on the facts of this case*.

38 To illustrate our point, we set out the Act Question once more:

> For the purposes of s 6(a) of the PCA, does the 'act' done by the agent 'in relation to his principal's affairs' need to either confer a dishonest benefit or advantage on the third party or be at the expense of the interests of the agent's principal?

In his written submissions, Mr Vergis argued that the relevant act done by Ishibe and Masui in relation to the Singaporean Company's affairs was their maintenance of Chia Lee as the Singaporean Company's sole distributor of

edible flour. He submitted that this act did not *dishonestly* benefit Chia Lee; nor was it at the expense of the Singaporean Company's interests.

39 We first observe that the Act Question conflated the second and third elements of an offence under s 6(*a*) of the PCA. It is clear that an offence under s 6(a) of the PCA will only be made out where there is an objectively corrupt element in the transaction (see *Tey Tsun Hang* at [12]). The fact that the "act" done by an agent "in relation to his principal's affairs" confers a dishonest benefit or advantage on the giver of the gratification, or is at the expense of the interests of the agent's principal, goes towards establishing that the transaction was objectively corrupt (which is the third element of an offence under s 6(*a*) of the PCA). This element should be distinguished from the element of inducement or reward for any "act" done by the agent "in relation to his principal's affairs", which is the *second* element of an offence under s 6(*a*) of the PCA. The words "in relation to his principal's affairs" should be widely construed; all that needs to be shown for the purposes of a conviction under s 6(*a*) of the PCA is that the offender was indeed an agent of the principal and that his act was one "in relation to his principal's affairs or business" (see *Mohamed Ali bin Mohamed Iqbal v Public Prosecutor* [1979–1980] SLR(R) 45 ("*Iqbal*") at [5]). The court's reasoning in *Iqbal* was cited with approval and applied in *Yusof* at [40].

40 Having identified the nub of the Act Question, we had no difficulty in finding that question to be nothing more than the Gratification Question couched in different terms. Both questions sought to challenge the Judge's *factual* finding that the profit-sharing arrangement was objectively corrupt (see [31]–[32] above); such a challenge clearly could not be entertained in CM 1.

41 The Act Question was also a purely hypothetical question that could never have made a difference to the outcome of the case. That question presupposed that the profit-sharing arrangement: (a) was not at the expense of the Singaporean Company's interests; and/or (b) did not confer a dishonest benefit or advantage on Chia Lee. The Judge, however, found that Chia Lee's appointment as the Singaporean Company's industrial flour distributor *was* adverse to the latter's interests. Given Chia Lee's vulnerable financial position as well as Koh's total inexperience with the industrial flour business, the Judge found that "appointing and retaining Chia Lee was not in the best interests of the Singapore[an] Company" (see the HC Judgment at [309]–[310]). Furthermore, he affirmed the District Judge's finding that the profit-sharing arrangement was objectively corrupt (see the HC Judgment at [12]; the District Judge's Judgment at [64]). Since the objectively corrupt element implies the feature of dishonesty (see *Tey Tsun Hang* at [20]), it follows that the Judge *did* find that the profit-sharing arrangement had conferred a dishonest benefit or advantage on Chia Lee, contrary to what the Act Question assumed. The answer to that question therefore could not possibly have affected the outcome of the case.

42 Accordingly, we refused to grant leave in respect of the Act Question. In any event, Mr Vergis did not seriously pursue the Act Question at the hearing.

The Reasonable Basis Question

43 In his written submissions, counsel for Masui, Mr Goh Aik Leng Mark ("Mr Goh"), argued that the District Judge had adopted a "purely subjective test" in analysing Koh's basis for believing that his payments to Masui and Ishibe were a *quid pro quo* for their continued support for and protection of Chia

Lee's edible flour distributorship. Mr Goh contended that the Judge had adopted a similar approach, thereby giving rise to the Reasonable Basis Question.

44 It was immediately apparent to us that the Reasonable Basis Question did not arise for determination by the High Court as it was founded on an entirely fictional premise. Contrary to Mr Goh's submission, neither the District Judge nor the Judge adopted a purely subjective approach. The District Judge held that Koh had *reasonably* believed that he was paying Masui and Ishibe in exchange for their support for Chia Lee's edible flour business. Not only had Masui and Ishibe held themselves out as persons of authority within Sojitz, but Koh also had legitimate anxieties over the longevity of Chia Lee's exclusive edible flour distributorship (see the District Judge's Judgment at [31]–[33]). Against this backdrop, the District Judge concluded that "it was *reasonable* for Koh to believe that [Masui and Ishibe] wielded the power and authority to affect his edible flour business" [emphasis added] (see the District Judge's Judgment at [34]). Since the Judge upheld this factual finding (see the HC Judgment at [12]), the Reasonable Basis Question did not arise for determination by the High Court.

45 By the same token, the determination of the Reasonable Basis Question would not have affected the outcome of the case. The Judge affirmed the District Judge's finding that Koh had a reasonable basis for believing that he was paying Masui and Ishibe in exchange for their continued support for Chia Lee's edible flour distributorship. Regardless of how the Reasonable Basis Question was answered, it would not have made any difference to the outcome of the appeals before the Judge.

46 The Reasonable Basis Question was also not a question of public interest. The answer to this question is well established: a recipient may be

guilty of corruption even if the giver did not intend to give the gratification as a *quid pro quo* (see *Tey Tsun Hang* at [21]). Moreover, it is trite that in establishing the requisite *mens rea* of an offence under s 6(*a*) of the PCA, what is paramount is the *recipient's* and not the giver's intent (see *Tey Tsun Hang* at [12] and [15]). The giver's intention is *evidentially* significant in so far as it sheds light on the recipient's intent (see *Tey Tsun Hang* at [15]). The focus, however, remains on whether the recipient accepted the gratification with corrupt intent; this is a question of fact to be examined from the recipient's perspective (see *Yuen Chun Yii v Public Prosecutor* [1997] 2 SLR(R) 209 at [93]).

47 More fundamentally, Masui's real grievance lay with the Judge's *factual* finding that Koh's payments were objectively corrupt inducements for him and Ishibe to continue protecting Chia Lee's edible flour distributorship. One need only consider Mr Goh's thinly veiled attempt to invite us to revisit issues of fact, such as Masui's actual authority over Chia Lee's edible flour business. Moreover, Mr Goh's exhortation for us to "clarify the degree to which the corrupt element of the transaction must be objectively established", even though that was a self-evidently fact-specific inquiry, was revealing of the true character of and the intention underlying the Reasonable Basis Question. As there was no basis for us to entertain what was, in substance, a backdoor appeal against the Judge's findings of fact, we refused to grant leave.

The Reasons Questions

48 The Reasons Questions concerned the judicial duty to give reasons. We first deal with the relevant question raised in CM 1 (see [26(c)] and [27] above).

49 Whether and the extent to which the High Court, in its appellate capacity, has a duty to give reasons is an inherently factual inquiry and not a question of law (see *James Raj* at [39]). As recognised in *Thong Ah Fat v Public Prosecutor* [2012] 1 SLR 676 ("*Thong Ah Fat*") at [41] and *Lim Chee Huat v Public Prosecutor* [2019] 5 SLR 433 at [25], there can be no fixed rule of universal application as to: (a) whether a judge demonstrates sufficient deliberation in preferring one side to the other; and (b) the particularity with which the judge is required to give reasons. Judges are not obliged to respond to every argument point by point, as though their judgments are pleadings filed to contest an appellant's pleadings.

50 The point that we have just made holds true even in Magistrate's Appeals where the appellant contends that the trial judge completely failed to consider evidence pertaining to a material element of the charge (see [27] above). In such situations, the High Court may nonetheless dismiss the appeal without providing independent reasons or addressing the specific grounds raised in the petition of appeal. Where the grounds raised in the petition of appeal have been considered in detail and rejected by the trial judge, the High Court is not obliged to reprise the trial judge's reasons or to furnish additional ones (see *Thong Ah Fat* at [44]; *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 ("*Yap Ah Lai*") at [69]). The High Court's reasons for dismissing an appeal may also be evident from the exchanges between the court and counsel (see *Yap Ah Lai* at [69]). In some cases, the very dismissal of an appeal may be taken to mean that the High Court agrees with the trial judge's reasoning (see *Ten Leu Jiun Jeanne-Marie v National University of Singapore* [2015] 5 SLR 438 at [49]). It follows that the question raised in CM 1, whether in its original or amended form, was not a question of law of public interest.

51 The two questions framed in CM 2 in relation to the judicial duty to give reasons (see [28(a)] and [28(b)] above) were equally unmeritorious. In Mr Goh's words, the questions respectively concerned "whether the [District] Judge's degree of copying the Prosecution's submissions [amounted] to judicial copying" and "whether the … Judge fulfilled his judicial duty to give reasoned decisions". Both questions were so narrowly confined to the specific context of this case that they were indisputably questions of fact (see *Public Prosecutor v Teo Chu Ha* [2014] 4 SLR 600 at [31]).

52 Furthermore, neither of those questions arose for determination by the High Court. They instead concerned a set of circumstances that did not actually obtain, namely: (a) that the District Judge had "extensively" replicated the Prosecution's closing submissions; and (b) that the Judge had failed to consider such conduct by the District Judge. For the same reason, we found that the determination of those questions would have had no bearing on the outcome of the case.

53 We begin with the central assumption that the District Judge had "[a]dopted the Prosecution's submissions without analysing the evidence in totality". This was a gross mischaracterisation of the District Judge's Judgment. The allegedly offending portion of the District Judge's Judgment consisted of a *single* paragraph that was not in fact copied substantially from the Prosecution's submissions, as is evident from the comparison below:

The Prosecution's closing submissions dated 27 December 2017 at para 32(f)	**The District Judge's Judgment at [29(vi)]**
By June 2005, Chia Lee *was in grave financial difficulties. Despite his parlous financial situation*, Koh continued to *make payment to* the	By June 2005, Chia Lee *had fallen into parlous financial difficulty. Notwithstanding this*, Koh continued to *pay* the accused persons whatever

accused persons of whatever amount he was able to. Koh did not stop the payment *as* he was concerned about his edible flour business. The payments only came to a halt when Chia Lee's accounts *came to be controlled by* Sojitz Japan. [emphasis added]	amount he was able to *raise*. Koh did not stop the *payments because* he was concerned about his edible flour business. The payments only came to a halt when Chia Lee's accounts came *under the direct control of* Sojitz Japan. [emphasis added]

54 Crucially, the paragraph of the District Judge's Judgment that Masui complained of was situated under the District Judge's *summary* of *Koh's evidence*. Far from adopting the Prosecution's submissions unquestioningly, the District Judge immediately proceeded to analyse Koh's evidence and to explain why he accepted that Koh's payments to Masui and Ishibe were a *quid pro quo* to ensure their continued support for Chia Lee's edible flour business (see the District Judge's Judgment at [30]–[35]). The allegation that the District Judge had failed to apply his mind to the evidence was thus entirely baseless and, in our view, patently unfair.

55 The assumption that the Judge had failed to consider the District Judge's alleged copying of the Prosecution's closing submissions was similarly unfounded. Before the Judge, Masui's then counsel argued that the District Judge's Judgment had replicated two factual errors in the Prosecution's written submissions. The first of those errors related to whether the Japanese Company's food-related business encompassed its flour business, while the second was a numerical error as to the amount on which Chao Shun had defaulted payment (see [9] above).

56 A quick scan of the record of proceedings revealed that the Judge had duly considered both points raised by Masui's then counsel. The Judge observed that the District Judge's finding in relation to the first of those two points plainly

accorded with the objective facts and could not be said to be erroneous. He further noted that the numerical error related to a minuscule difference of only $7 and that neither of the two points raised on Masui's behalf would have affected Masui's and Ishibe's convictions or sentences. Having scrutinised the District Judge's Judgment, the Judge concluded that the District Judge had clearly applied his mind to the case and had not blindly adopted the Prosecution's reasoning. In the light of all the reasons proffered by the Judge for rejecting the allegation of judicial copying, there was no basis at all for Mr Goh to now assert that the Judge had failed to consider this issue.

57 While making his submissions on the Reasons Questions, Mr Goh also revisited the evidence on Chia Lee's financial health and on Sojitz's annual reviews of Chia Lee's credit. This was a naked attempt to re-argue that: (a) Koh did not have reason to believe that Masui and Ishibe had the power to affect Chia Lee's edible flour distributorship; and (b) Koh's payments to Masui and Ishibe were therefore not a *quid pro quo* for their continued protection of Chia Lee's edible flour distributorship. Both of these were issues of fact that had no place in a criminal reference and should never have been raised in CM 2.

Costs

58 For the foregoing reasons, we held that CM 1 and CM 2 did not raise any question of law of public interest and dismissed both criminal motions.

59 The Prosecution sought a costs order of at least $2,000 against Ishibe and Masui each, on the basis that the criminal motions were backdoor appeals against the Judge's findings. Having heard the parties, we agreed with the Prosecution that a costs order under s 409 of the CPC was warranted.

60 In *Huang Liping v Public Prosecutor* [2016] 4 SLR 716 ("*Huang Liping*"), we emphasised (at [23]) that the court will not hesitate to award costs against applicants who mount backdoor appeals by having recourse to s 397(1) of the CPC. Section 397 of the CPC is an exceptional procedure that allows the Court of Appeal to clarify points of law of public interest; it is most decidedly not an additional tier of appeal. An attempt to utilise that procedure to mount a backdoor appeal, where the case falls far short of the strict conditions that must be met before that procedure may be invoked, would justify a finding that the application was brought in abuse of process (see *Huang Liping* at [20]–[21]; *Tang Keng Lai v Public Prosecutor* [2021] 2 SLR 942 ("*Tang Keng Lai*") at [14]).

61 It will be apparent from our analysis above that CM 1 and CM 2 could not conceivably have raised any question of law of public interest. They were instead poorly disguised attempts to appeal against the Judge's findings of fact. We were thus satisfied that CM 1 and CM 2 had been brought in abuse of process, and we ordered Ishibe and Masui to each pay costs of $2,000 to the Prosecution.

62 We add that Masui's conduct in CM 2 was particularly egregious as he repeatedly alleged, without any proper basis whatsoever, that the District Judge had been or could have been biased towards the Prosecution. Allegations of judicial bias are extremely serious; they may not only be utilised "as a weapon of abuse by disgruntled litigants" but may also waste the court's valuable resources and time (see *BOI v BOJ* [2018] 2 SLR 1156 at [141]). In this case, Masui's unfounded allegations of bias against the District Judge only served to demonstrate the lengths to which he was prepared to go to re-litigate his case, thereby revealing, with utmost clarity, the backdoor appeal that CM 2 was.

63 At the hearing, we raised the possibility of making a personal costs order under s 357(1) of the CPC against counsel for Masui and Ishibe. This was for two reasons. First, the nature of applications under s 397(1) of the CPC means that applicants will likely depend heavily on their counsel to assess whether the conditions for leave to be granted have been met (see *Tang Keng Lai* at [15]). Counsel are responsible for ensuring that they do not put forward a case that amounts to an abuse of process, a responsibility that Mr Goh and Mr Vergis did not appear to have fully discharged. Second, we were especially troubled by the allegations that the District Judge and the Judge had failed to fulfil their judicial duty to give reasoned decisions and/or had extensively copied the Prosecution's closing submissions. Allegations against judges, if found to be unjustified, will usually attract personal liability for counsel in the form of costs orders; officers of the court should know better than to make such grave and reckless assertions that risk diminishing public confidence in the judicial system.

64 We ultimately decided not to make a personal costs order against Mr Vergis and Mr Goh as they candidly accepted at the hearing that the Reasons Questions were unmeritorious. This, however, should not be taken to mean that counsel who make spurious allegations against judges will not have costs ordered against them personally as long as they recant those allegations.

65 At Mr Vergis's and Mr Goh's request, and without objection from the Prosecution, we ordered Ishibe and Masui to commence serving their sentences on 6 September 2021, with bail extended until then.

CRF 3

Whether the conditions under s 397(1) of the CPC are satisfied

66 We now turn to CRF 3, in which the Prosecution invites us to answer the following question ("the Referred Question"):

> In cases where the gratification is an outright gift of money, must the court make a penalty order under section 13 of the Prevention of Corruption Act (Cap 231, 1993 Rev Ed) for a sum equivalent to the sum of money received by the recipient, where (a) the recipient has returned or repaid the sum of money to the giver and/or (b) the sum of money has been disgorged from the recipient whether voluntarily or otherwise?

67 The Referred Question arises due to conflicting High Court authorities on the proper construction of s 13 of the PCA in cases where the gratification is a sum of money, and where part or all of the gratification has been repaid or disgorged.

68 As mentioned at [18] above, the Judge held that in cases where the gratification is a sum of money, the court *must* impose a penalty of a sum equivalent to the gratification sum and is precluded from taking into account the fact that part or all of that gratification sum may have been repaid or disgorged (see the HC Judgment at [326] and [336]). In contrast, the High Court held in *Marzuki* (at [71]) that where the corrupt recipient has returned or repaid the gratification sum to the giver, the court should *not* impose a penalty of a sum equivalent to the gratification sum. The High Court explained as follows (see *Marzuki* at [71]):

> … the underlying principle in general is that a penalty order for a sum equivalent to the sum of money received by the recipient will *not* be appropriate where: (a) *the recipient has returned or repaid the money to the giver*; or (b) *the money has been disgorged from the recipient, whether voluntarily or otherwise*. This is because if the position were otherwise, then the effect of the penalty order would go unreasonably beyond the objective

> of stripping away from the recipient the benefit that he corruptly received. [emphasis added]

The Judge interpreted the above passage from *Marzuki* as applying only to cases involving gratification in the form of a *loan* of money rather than a *gift* of money (see the HC Judgment at [333]–[334]). However, the Prosecution contends that the principle articulated in *Marzuki* at [71] is one of general application that applies to money gratification in the form of both loans and gifts, and one that conflicts with the Judge's interpretation of s 13 of the PCA.

69 As the Referred Question involves a conflict of judicial authority and has been referred by the Public Prosecutor, it is deemed to be a question of public interest under ss 397(6)(*a*) and 397(6)(*b*) of the CPC respectively. We note that ss 397(6)(*a*) and 397(6)(*b*) of the CPC are deeming provisions that do not impinge on our substantive jurisdiction to decide whether to answer the Referred Question (see *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 ("*GCK*") at [62]). Nonetheless, we agree with the parties that the conditions in s 397(1) of the CPC (see [29] above) have been satisfied and that the Referred Question should be answered.

70 We observe, however, that the Referred Question appears to be too limited in scope in two respects. First, the Referred Question is unduly confined to "cases where the gratification is an outright gift of money". While the Prosecution likely framed the Referred Question in this manner to exclude cases involving gratification in the form of a loan of money (such as *Marzuki*), the distinction between gratification in the form of a *gift* of money and gratification in the form of a *loan* of money is inconsequential to, and is indeed not reflected in, s 13 of the PCA. Second, the Referred Question only contemplates situations where the recipient has returned or repaid the gratification sum to the *giver*. Although this was the relevant context in *Marzuki*, our answer to the Referred

Question will naturally have a bearing on cases in which the gratification sum has been repaid to the *principal* or disgorged by the authorities. In our judgment, the Referred Question should be sufficiently wide to encompass these other circumstances in which repayment or disgorgement may occur.

71 As we cautioned in *GCK* at [47], questions which are framed too narrowly may obscure the pertinent public interest elements, thereby undermining the purpose of bringing a criminal reference in the first place. We therefore reframe the Referred Question as follows:

> Where the gratification is *a sum of money*, must the court order the recipient to pay a penalty under s 13 of the Prevention of Corruption Act (Cap 231, 1993 Rev Ed) of a sum equivalent to the amount of money received by him, if (a) he has returned or repaid *all or part of the sum of money*; and/or (b) *all or part of the sum of money* has been disgorged from him, whether voluntarily or otherwise? [emphasis added]

In our view, the Referred Question as reframed allows for a wider discussion of the four key actors whose interests are engaged in the context of s 13 of the PCA – namely, the State, the principal, the giver, and the recipient (who is the principal's agent). All references to "the Referred Question" hereinafter are references to the Referred Question as reformulated above.

The proper interpretation of s 13(1) of the PCA

72 Section 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) ("IA") mandates a purposive approach to statutory interpretation. The purposive interpretation of a statutory provision consists of the following three steps (see *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [37]):

(a) First, ascertain the possible interpretations of the provision in question, having regard not just to the text of the provision but also to the context of that provision within the written law as a whole.

(b) Second, ascertain the legislative purpose or object of the statute.

(c) Third, compare the possible interpretations of the text against the purposes or objects of the statute.

The ordinary meaning of s 13(1) of the PCA

73 We turn to the first stage of the *Tan Cheng Bock* framework and begin by setting out s 13 of the PCA:

> **When penalty to be imposed in addition to other punishment**
>
> **13.—**(1) Where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall, in addition to imposing on that person any other punishment, order him to pay as a penalty, within such time as may be specified in the order, a sum which is equal to the amount of that gratification or is, in the opinion of the court, the value of that gratification, and any such penalty shall be recoverable as a fine.
>
> (2) Where a person charged with two or more offences for the acceptance of gratification in contravention of this Act is convicted of one or some of those offences, and the other outstanding offences are taken into consideration by the court under section 148 of the [CPC] for the purpose of passing sentence, the court may increase the penalty mentioned in subsection (1) by an amount not exceeding the total amount or value of the gratification specified in the charges for the offences so taken into consideration.

The Prosecution's interpretation of s 13(1) of the PCA rests on two key planks: (a) the application of the *reddendo singula singulis* principle; and

(b) a distinction between gratification in the form of an outright gift of money and gratification in the form of a loan of money.

74 The *reddendo singula singulis* principle concerns the use of words distributively. Where a complex sentence has multiple subjects and objects, or multiple verbs and subjects, it may be properly construed by reading the sentence distributively. This is illustrated by the following examples (see Oliver Jones, *Bennion on Statutory Interpretation* (LexisNexis, 6th Ed, 2013) at p 1121):

> *Example 388.1* The typical application of this principle is where a testator says 'I *devise and bequeath* all my *real and personal* property to B'. The term *devise* is appropriate only to real property. The term *bequeath* is appropriate only to personal property. Accordingly, by the application of the principle *reddendo singula singulis*, the testamentary disposition is read as if it were worded 'I devise all my real property, and bequeath all my personal property to B'.
>
> *Example 388.2* If an enactment spoke of what was to happen when 'anyone shall draw or load a sword or gun …' this would similarly be read as 'anyone shall draw a sword or load a gun …'
>
> [emphasis in original]

75 Applying the *reddendo singula singulis* principle, the Prosecution argues that s 13(1) of the PCA should be read distributively as follows:

> **13.—**(1) Where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, **if that gratification is a sum of money** or if the value of that gratification can be assessed, the court shall, in addition to imposing on that person any other punishment, order him to pay as a penalty, within such time as may be specified in the order, **a sum which is equal to the amount of that gratification** or is, in the opinion of the court, the value of that gratification, and any such penalty shall be recoverable as a fine. [emphasis added in bold and underline]

76 The Prosecution essentially contends that where the gratification is a sum of money, the court *must* order that the recipient pay a penalty of a sum equal to the amount of that gratification. It is only where the gratification does not take the form of money (in other words, where "the value of that gratification can be assessed") that the court has the "discretion" to impose a penalty of a sum that is "in [its] opinion, the value of that gratification". This was also the position adopted by the Judge (see the HC Judgment at [326]).

77 With respect, we find the Prosecution's interpretation of s 13(1) of the PCA to be untenable. To reconcile its interpretation with the decision in *Marzuki*, the Prosecution construes the phrase "a sum of money", as used in s 13(1) of the PCA, to mean a sum of money *received as a gift*. According to the Prosecution, if the gratification is a *loan* of money, it is not "a sum of money" but gratification of "[a] value … that can be assessed". This means that in assessing the value of a loan of money, the court can take into account the repayment or disgorgement of all or part of the sum that was loaned.

78 We note that the Judge likewise did *not* consider gratification in the form of a *loan* of money to be gratification in the form of a *sum* of money (see the HC Judgment at [326]–[327]):

> … It is only if a court finds that *the gratification did not take the form of a sum of money* (*eg*, a *loan* or a service), that the court looks into the question of whether the 'value of the gratification can be assessed', and is subsequently *given the limited discretion to determine the value of that gratification*. …
>
> … The court is only given a limited discretion to determine the value of the gratification if there may be multiple acceptable ways to value it. For example, assuming that the gratification is a loan [of money], it is the recipient's ability to use that money for a period of time that constitutes the gratification rather than the actual sum loaned (*Marzuki* … at [60]). A number of factors will affect the valuation of the gratification such as whether it was repaid, when it was repaid, the choice of interest rates, *etc.*

[emphasis added]

79 The approach adopted by the Judge and the Prosecution, however, runs into two main difficulties. First, it does violence to the plain language of s 13(1) of the PCA. On the Prosecution's case, the relevant distinction in s 13(1) of the PCA, as far as the *reddendo singula singulis* principle is concerned, is that between "gratification [as] a sum of money" and "gratification … [of a] value … that … can be assessed". In other words, what is material is whether the gratification is monetary. Yet, the Prosecution's construction of s 13(1) of the PCA requires us to interpret the phrase "a sum of money" to mean a *gift* of money, when that phrase is sufficiently broad to encompass gratification in the form of both gifts of money *and* loans of money. On the other side of the coin, the Prosecution's strained interpretation of s 13(1) of the PCA requires us to engage in the mental gymnastics of excluding a *loan* of money from the ordinary meaning of the phrase "a sum of money". The construction that the Prosecution seeks to prevail upon us is thus wholly at odds with the express language of s 13(1) of the PCA.

80 The second of the two difficulties that we have alluded to is this: the Prosecution's construction of s 13(1) of the PCA ignores the practical distinction between gratification in the form of a gift of money and gratification in the form of a loan of money. Although the *amount* of the gratification may be the same in both cases, the *value* of the gratification may well be very different. Where a recipient corruptly receives a loan of money, it is his ability to use that money for a period of time that constitutes the relevant gratification. Hence, the value of the gratification is not necessarily the amount of the loan principal and is instead likely to be the benefit of having had the use of that sum of money from the time of receipt to the time of repayment (see *Marzuki* at [60] and [81]). By glossing over the distinction between gratification in the form of

a gift of money and gratification in the form of a loan of money, the Prosecution's interpretation of s 13(1) of the PCA also elides the distinction between the *amount* and the *value* of gratification in the form of a loan of money.

81 The Prosecution further contends that a contextual reading of the PCA lends support to their construction of s 13(1) of the PCA. In particular, they point to the contrasting language used in ss 13(1) and 13(2) of the PCA. Section 13(2) of the PCA states as follows:

> (2) Where a person charged with two or more offences for the acceptance of gratification in contravention of this Act is convicted of one or some of those offences, and the other outstanding offences are taken into consideration by the court under section 148 of the [CPC] for the purpose of passing sentence, the court may increase the penalty mentioned in subsection (1) by an amount not exceeding the total amount or value of the gratification specified in the charges for the offences so taken into consideration.

The Prosecution highlights that s 13(2) of the PCA expressly provides that the court has a discretion as to whether the penalty imposed under s 13(1) of the PCA may be increased and, if so, the amount by which it may be increased. Furthermore, s 13(2) of the PCA explicitly provides an upper limit on the amount by which the penalty may be increased – namely, the total amount or value of the gratification specified in the charges that are taken into consideration for the purpose of sentencing. According to the Prosecution, the use of the words "may" and "not exceeding" in s 13(2) of the PCA stand in contrast to the use of the word "shall" in s 13(1) of the PCA. The Prosecution thus urges us to conclude that although the court has a "discretion" under s 13(2) of the PCA when deciding on the appropriate uplift (if any) to the penalty, no such flexibility exists under s 13(1) of the PCA.

82 We disagree with the Prosecution. Notably, s 13(1) of the PCA does *not* state that the penalty imposed shall be of an amount equal to "*the total amount or value of the gratification specified in the charges"* [emphasis added] on which the recipient has been convicted. The contrasting language employed in ss 13(1) and 13(2) of the PCA indicates that the penalty imposed under the former need not be equivalent to the total amount or value of the gratification specified in the charges – possibly because, for example, the gratification has been returned or disgorged, whether in part or in full. It thus appears to us that s 13(2) of the PCA in fact *weakens* the Prosecution's case. Had Parliament intended to straitjacket the court in so far as the quantification of the penalty under s 13(1) of the PCA is concerned, the language of that provision would surely have mirrored that of s 13(2) of the PCA.

83 In our judgment, the proper construction of s 13(1) of the PCA is as follows:

> **13.—**(1) Where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, **if that gratification is a sum of money or if the value of that gratification can be assessed**, the court shall, in addition to imposing on that person any other punishment, order him to pay as a penalty, within such time as may be specified in the order, **a sum which is equal to the amount of that gratification or is, in the opinion of the court, the value of that gratification**, and any such penalty shall be recoverable as a fine. [emphasis added in bold]

As we explained to the parties at the hearing, the phrase "if that gratification is a sum of money or if the value of that gratification can be assessed" is intended to ensure that the gratification is *quantifiable*. Section 2 of the PCA contemplates three broad categories of gratification: (a) money; (b) non-monetary gratification that is nonetheless of a value that may be assessed (for example, a car or a valuable security); and (c) gratification that does not readily

admit of a monetary value, such as the protection of the recipient from disciplinary proceedings or the promise of a favour (see ss 2(*d*) and 2(*e*) of the PCA respectively). The phrase "if that gratification is a sum of money or if the value of that gratification can be assessed" simply stipulates that the court is obliged to impose a penalty where the first two of the three aforementioned categories of gratification are concerned. In cases involving the third category of gratification, s 13(1) of the PCA is inapplicable because the gratification is unquantifiable.

84 Although s 13(1) of the PCA distinguishes between monetary and non-monetary gratification, that distinction merely makes it clear that even if the gratification is non-monetary, a penalty may nonetheless be imposed by reference to the *value* of that gratification (see *Marzuki* at [58]). In other words, a penalty may be imposed where the first *and second* categories of gratification are concerned.

85 In this vein, we observe that it is somewhat inaccurate for the Prosecution to speak of s 13(1) of the PCA as a provision that affords the court the limited "discretion" to assess the value of gratification falling within the second category. The court's power to assess the value of gratification falling within the second category arises from the very nature of such gratification. Where non-monetary gratification is capable of valuation, the court *necessarily* has to determine the value of that gratification. However, it does not follow that the court's ability to take into account sums which have been repaid, returned or disgorged should be limited only to situations where the gratification does not involve a sum of money. This is especially since, as we discuss at [88]–[117] below, the object of s 13(1) of the PCA is to ensure that the recipient does not *retain* his ill-gotten gains, whether monetary or otherwise.

86 The Prosecution's construction of s 13(1) of the PCA is, in our view, unprincipled. Section 13(1) of the PCA itself recognises the need to value the gratification where the gratification falls within the second of the three categories that we have discussed (for example, where the gratification is a watch). By the same token, the *value* of money gratification that has been returned or disgorged should also fall to be assessed for the purposes of s 13(1) of the PCA (see *Marzuki* at [82]). Relatedly, to use the example of gratification in the form of a watch again, there is no question that the court should distinguish between a *gift* of that watch and a temporary *loan* of that watch, when assessing the value of that watch for the purposes of s 13(1) of the PCA. In our view, the same distinction should be drawn in cases involving *money* gratification (see *Marzuki* at [62(c)]). Gratification in the form of a *loan* of money cannot possibly be of the same value as a *gift* of that sum of money.

87 For these reasons, we conclude that the ordinary meaning of s 13(1) of the PCA is as follows: as long as the gratification is a sum of money or of a value that can be assessed, the court shall order the recipient to pay a penalty of a sum equal to the amount of that gratification *or* a sum that is, in its opinion, the value of that gratification. The corollary to our finding is that where the gratification is a sum of money, but all or part of it has been repaid or disgorged, the court should impose a penalty of a sum that reflects the value of the gratification *retained* by the recipient.

The legislative purpose of s 13(1) of the PCA

88 The second stage of the *Tan Cheng Bock* framework requires us to ascertain the legislative purpose of s 13(1) and the part of the PCA in which that provision is situated (see *Tan Cheng Bock* at [37(b)] and [54(c)]). In this regard, the legislative purpose of a statutory provision should ordinarily be gleaned

from the text of the provision in its statutory context (see *Tan Cheng Bock* at [43] and [54(c)(ii)]). The third stage calls for us to compare the possible interpretations of s 13(1) against the purpose of the relevant part of the PCA. An interpretation that furthers the purpose of the written text should be preferred to one that does not (see *Tan Cheng Bock* at [37(c)] and [54(c)]).

89 It appears to us that the crux of the dispute in CRF 3 lies in a proper understanding of the purpose of s 13(1) of the PCA. According to Mr Vergis (with whose submissions Mr Goh aligns himself), s 13(1) of the PCA is intended to prevent recipients from retaining the benefit of the gratification and is not meant to operate as an additional punitive measure. Mr Vergis hence submits that whether all or part of the gratification has been repaid or disgorged is a relevant consideration when the court quantifies the penalty to be imposed under s 13(1) of the PCA. On the other hand, the Prosecution suggests that s 13(1) of the PCA is, in substance, a penal or punitive measure, despite its hesitancy to articulate its position in these terms. The Prosecution advances three key arguments in relation to the legislative purpose of s 13(1) of the PCA. These pertain to: (a) the language of s 13 of the PCA; (b) the ministerial statement made at the second reading of the Prevention of Corruption Bill (No 63 of 1960) ("the PCA Bill"); and (c) the relationship between ss 13 and 14 of the PCA. We consider each of these arguments in turn.

90 Turning to the first argument, the Prosecution contends that the legislative purpose of s 13 of the PCA, as discerned from the text of that provision, is "to ensure that the recipient of gratification pays, to the State, a sum of money equivalent to the value of that gratification received in respect of PCA offence(s) which the recipient has been convicted of". We reject this rather tautological submission because it rests on a *literal* rather than a *purposive* interpretation of s 13(1) of the PCA. It is generally unhelpful to frame the

legislative purpose of a statutory provision as the very action or mechanism provided for by that provision.

91 In our judgment, there are three ways in which the text of s 13(1) of the PCA indicates that the legislative purpose of that provision is to prevent corrupt recipients from *retaining* their ill-gotten gains. First, s 13(1) of the PCA *only* targets the recipient and not the giver in a corrupt transaction, even though both parties would have committed an offence under ss 6(*a*) and 6(*b*) of the PCA respectively. Given that the recipient and the giver are equally culpable in most cases involving a corrupt transaction, the fact that s 13(1) of the PCA is directed solely at the recipient suggests that its underlying rationale is disgorgement, not punishment.

92 Second, it bears noting that s 13(1) of the PCA only applies where the recipient has actually accepted or obtained gratification. A penalty may only be imposed under s 13(1) of the PCA "[w]here the court convicts any person of an offence *committed by the acceptance of any gratification* in contravention of any provision of [the PCA]" [emphasis added]. In contrast, an agent need not have accepted or obtained gratification for an offence under s 6(*a*) of the PCA to be made out. For ease of reference, we set out s 6(*a*) of the PCA again:

> **Punishment for corrupt transactions with agents**
>
> **6.** If **—**
>
> (*a*) any agent corruptly accepts or obtains, or *agrees to accept* or *attempts to obtain*, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business …
>
> [emphasis added]

Any agent who corruptly *agrees* to accept or corruptly *attempts* to obtain gratification will have committed an offence under s 6(*a*) of the PCA, but the court may not impose a penalty under s 13(1) of the PCA in such cases. This strongly suggests to us that the legislative purpose of s 13(1) of the PCA is the *disgorgement* of corrupt gains and that that provision is *not* intended to provide for an additional layer of punishment.

93 Third, s 13(1) of the PCA is not framed as a fine. Although s 13(1) of the PCA provides that any penalty imposed thereunder shall be *recoverable* as a fine, it does not provide that an offender who unlawfully accepts any gratification shall be *liable to* pay a fine equivalent to the amount of that gratification. If, however, a recipient who voluntarily returns or surrenders the gratification is subject to a penalty for the full amount of the gratification, as the Prosecution contends, the penalty would effectively act as a *fine* over and above any other sentence that may have been imposed (see *Marzuki* at [62(b)]). This is problematic on two counts. First, and as we have just mentioned, nothing in s 13(1) of the PCA suggests that it was intended to have the effect of a fine. Second, and more significantly, it is the recipient who voluntarily returns or surrenders the gratification who will be punished with such a fine. In contrast, where a recipient retains the gratification and a penalty is subsequently imposed, the penalty does *not* act as a fine; it merely serves to disgorge the gratification. In our judgment, it would be grossly unprincipled for s 13(1) of the PCA to punish a recipient who voluntarily returns or surrenders the gratification but not a recipient who does not do so, when it is plainly the former who is less blameworthy (see *Marzuki* at [62(b)]).

94 The Prosecution next relies on extraneous material – namely, the speech made by Mr Ong Pang Boon, the then Minister for Home Affairs, at the second reading of the PCA Bill ("the Ministerial Statement") – in support of its position

that s 13(1) of the PCA is intended to act as a deterrent. It submits that the Ministerial Statement confirms what it understands to be the ordinary meaning of s 13(1) of the PCA (see [76] above).

95 In our view, the ordinary meaning of s 13(1) of the PCA is unambiguous: where the gratification is a sum of money that has been repaid or disgorged, whether in part or in full, the court need not (and, indeed, should not) impose a penalty of a sum equivalent to the amount of money received by the recipient (see [87] above). It follows that extraneous material can only be used to confirm, but not to alter, this ordinary meaning (see s 9A(2)(*a*) of the IA and *Tan Cheng Bock* at [54(c)(iii)(A)]). However, even if we were to assume, for the sake of argument, that s 13(1) of the PCA is ambiguous or obscure on its face, we find the Ministerial Statement to be of little assistance in illuminating the meaning of that provision.

96 The relevant passage of the Ministerial Statement reads as follows (see *Singapore Parliamentary Debates, Official Report* (13 February 1960) vol 12 at col 380 (Ong Pang Boon, Minister for Home Affairs)):

> Clause 13 [which was later enacted as s 13 of the Prevention of Corruption Ordinance 1960 (Ord 39 of 1960), the then equivalent of s 13(1) of the PCA] empowers a Court to order a person found guilty of accepting an illegal gratification to pay a penalty equal to the amount of that gratification in addition to any other punishment imposed, and such penalty shall be recoverable as a fine. This will act as a deterrent because, in addition to the penalty for the offence, the culprit is called upon to pay the amount he had taken as a bribe.

This passage, however, seems to be more silent than supportive of the Prosecution's position. In *Marzuki*, the court considered the very same passage and rejected the Prosecution's argument for two reasons which we adopt. First, s 13 of the PCA serves as a deterrent not because it is a further form of

punishment, but because potential offenders know that they will not be able to *retain* their corrupt gains if they are caught (see *Marzuki* at [64]). In other words, the deterrent function of s 13 of the PCA is not inconsistent with the legislative purpose of disgorgement. Second, the deterrent effect of a penalty under s 13(1) of the PCA is attenuated in cases where the recipient does not voluntarily return or surrender the gratification. Rather counter-intuitively, the deterrent effect of s 13(1) of the PCA is amplified in cases where the recipient voluntarily returns or surrenders the gratification and is thus out of pocket (see *Marzuki* at [64]).

97 The Prosecution's reliance on the Ministerial Statement is misplaced for two other reasons. First, the relevant passage from the Ministerial Statement (see [96] above) refers only to "a penalty equal to the amount of [the] gratification" and a penalty of "the amount [that the recipient] had taken as a bribe". No mention is made of the fact that the court may, in appropriate cases, impose a penalty of a sum that is, in its opinion, the value of the gratification. Evidently, the Ministerial Statement was not intended to be an all-encompassing or definitive pronouncement on s 13(1) of the PCA, and it should not be treated as such. As we cautioned in *Tan Cheng Bock v Attorney-General* [2017] 5 SLR 424 at [87], one ought to refrain from "construing speeches in Parliament as if they were statutory … provisions with fine distinctions and deliberate nuances in the choice of words and phraseology. They are not always amenable to such dissection under the microscope."

98 Second, and relatedly, the mere fact that the Ministerial Statement was made in Parliament at the second reading of the PCA Bill does not mean that it is relevant in ascertaining the legislative purpose of s 13(1) of the PCA (see *Tan Cheng Bock* at [52]). Importantly, the Ministerial Statement was not directed at the very point of statutory interpretation in dispute; nor does it clearly and unequivocally indicate that s 13(1) of the PCA is concerned with punishment

rather than disgorgement (see *Tan Cheng Bock* at [52] and [54(iv)]). We are thus of the view that the Ministerial Statement is not relevant extraneous material for the purpose of determining whether the legislative purpose of s 13(1) of the PCA is targeted at punishment or disgorgement.

99 For completeness, we note that the Judge also referred to certain remarks made by Mr Teo Chee Hean ("Minister Teo"), the then Deputy Prime Minister and Minister for Home Affairs, in Parliament in 2013. In response to a parliamentary question about the measures undertaken by the Ministry of Home Affairs to tackle match-fixing, Minister Teo replied as follows (see *Singapore Parliamentary Debates*, *Official Report* (21 October 2013) vol 90 (Teo Chee Hean, Deputy Prime Minister and Minister for Home Affairs)):

> There are stiff penalties for match-fixing corruption. Under sections 5 and 6 of the PCA, persons convicted of corruption face fines not exceeding $100,000, or imprisonment for up to five years, or both. *In addition, under section 13 of the PCA, the Court may impose a further financial penalty against person who accept gratification, equivalent to the amount received. …* [emphasis added]

According to the Judge, Minister Teo's remarks showed that Parliament had envisaged that any penalty imposed under s 13(1) of the PCA had to be equal to the amount of the gratification received by a corrupt recipient. In this regard, the Judge observed that Minister Teo had omitted to mention the possibility of the court imposing a penalty of a sum *less* than the amount of the gratification received by the recipient (see the HC Judgment at [332]).

100 With respect, the Judge erred in attaching significance to the fact that Minister Teo had not alluded to that possibility. Minister Teo was responding to a parliamentary question on the measures undertaken by the Ministry of Home Affairs to stamp out match-fixing in Singapore. In that context, there was

no reason at all for him to have pointed out that the court can impose a penalty of a sum that is less than the amount of the gratification received by a corrupt recipient, where all or part of the gratification has been repaid or disgorged. Nothing can be read into the fact that he did not raise this point. If anything, Minister Teo's remarks demonstrate the dangers of relying on extraneous material that is not directed at the very point of statutory interpretation in dispute (see [98] above).

101 We also decline to place any weight on Minister Teo's remarks for the reason earlier canvassed at [97]. In any event, Minister Teo's remarks, which were made *after* the passage of the PCA, are not relevant legislative extraneous material that may aid in the construction of s 13(1) of the PCA. The parliamentary debates that are relevant to statutory interpretation are those that take place when a Bill is being considered by Parliament *prior* to its passage. Parliamentary debates that occur thereafter shed little light on the legislative intention behind the enactment of a statutory provision. They are therefore, strictly speaking, of limited relevance to statutory interpretation.

102 The Prosecution's third argument concerns the relationship between ss 13 and 14 of the PCA. Section 14 of the PCA provides as follows:

> **Principal may recover amount of secret gift**
>
> **14.—**(1) Where any gratification has, in contravention of this Act, been given by any person to an agent, the principal may recover as a civil debt the amount or the money value thereof either from the agent or from the person who gave the gratification to the agent, and no conviction or acquittal of the defendant in respect of an offence under this Act shall operate as a bar to proceedings for the recovery of that amount or money value.
>
> (2) Nothing in this section shall be deemed to prejudice or affect any right which any principal may have under any written law or rule of law to recover from his agent any money or property.

103 The Prosecution argues that since the imposition of a penalty under s 13 of the PCA does not preclude recovery under s 14 of the PCA, Parliament has expressly provided for corrupt recipients to be liable to *both* their principal and the State. The suggestion in *Marzuki* (at [71]) that Parliament could not have intended for such offenders to be out of pocket is, according to the Prosecution, incorrect.

104 We disagree with the Prosecution for three reasons. First, s 14 of the PCA does no more than underscore the fact that the recipient's *civil* liability to his principal is unaffected by s 13 of the PCA. Section 14 of the PCA is concerned with *restitution*; this explains why the principal can choose to recover the amount or the money value of the gratification from either the recipient (who is the principal's agent) or the person who gave the gratification to the recipient. However, it does not follow from the fact that corrupt recipients may be out of pocket upon the conclusion of criminal *and* civil proceedings that Parliament had intended for recipients to be out of pocket *by operation of s 13 of the PCA alone*.

105 Second, the import of ss 13 and 14 of the PCA is, according to the Prosecution, that a recipient may be "doubly liable". This is because the recipient may wind up having to pay a sum equivalent to 200% of the amount or value of the gratification received: 100% to the State and 100% to his principal. As we explain at [125] and [140] below, disgorgement on a 200% basis is permissible and, indeed, wholly justified under certain circumstances. But the Prosecution's construction of s 13(1) of the PCA will, in some cases, lead to the recipient being *trebly* liable. Even if the recipient fully returns the gratification to the *giver*, he may still be liable to the principal (for example, in actions for fraud or breach of fiduciary duty). On the Prosecution's case, the recipient would also be liable to pay a penalty of the full amount of the

gratification, notwithstanding that the gratification has been fully repaid to the giver. In effect, the recipient will have *thrice* accounted for the gratification. There is nothing in the PCA to indicate that Parliament intended for corrupt recipients to bear such an onerous outcome.

106 Our third reason relates to a point that we will elaborate on shortly: namely, that among the State, the principal, the giver, and the recipient, it is the *principal's* interests that are paramount. As Mr Vergis highlights, s 14 of the PCA in fact evinces Parliament's view that the primary victim is the *principal* and that recovery by the *principal* is of foremost importance. This much is evident from the fact that a recipient who surrenders the gratification to the authorities in full will nonetheless remain liable to his principal, by virtue of s 14 of the PCA. In contrast, nowhere in the PCA is it expressly stated that a recipient who fully returns the gratification sum to his principal will remain liable to the State for the entire sum (by operation of s 13 of the PCA). Clearly, Parliament intended for the principal's interests to be accorded the most weight in this context – a legislative intention that would be severely undermined by the Prosecution's construction of s 13(1) of the PCA, for the reasons that we explain at [109] below.

107 For these reasons, we find that the legislative purpose of s 13(1) of the PCA is to disgorge the gratification sum from the corrupt recipient. As we highlighted to the parties at the hearing, it is useful to consider how that purpose is best advanced in the light of the respective interests of the four main actors – namely, the State, the giver, the recipient, and the principal.

108 The State's primary interest is to prevent the corrupt recipient from profiteering from his offences; it is plainly not seeking to earn a revenue by way of s 13(1) of the PCA. The recipient's interest, on the other hand, lies broadly

in fairness; any punishment and penalty imposed should be proportionate to his wrongdoing. As for the giver, his interest in recovering the gratification is not unworthy of consideration, particularly in cases such as the present where he has effectively been coerced into partaking in the corrupt scheme. Nevertheless, the fact that he, too, is an offender (under s 6(*b*) of the PCA) renders his interest a relatively weak one.

109 In our judgment, it is the *principal's* interest in recovery that assumes primacy. After all, he is the innocent party against whom the wrongs have been committed. Given that he has the most compelling and the most legitimate claim to the gratification sum, repayment to the *principal* is a policy that the law should incentivise. The Prosecution's interpretation of s 13(1) of the PCA, however, only incentivises recipients to retain the gratification sum for disgorgement by the *State* or, at best, to surrender the gratification sum to the *State*. This is because any part of the gratification that has already been recovered by the State cannot be the subject of a penalty under s 13(1) of the PCA. Yet, since a penalty imposed under s 13(1) of the PCA is recoverable by the State to begin with, the Prosecution's construction does little to further the policy underlying that provision.

110 Perversely, it is the *principal's* interest – the most powerful interest in this context – that the Prosecution's construction of s 13(1) of the PCA jeopardises. The Prosecution's interpretation would not only discourage a recipient who wishes to purge his wrongdoing by voluntarily returning the gratification sum to the principal, but would also *penalise* such a recipient by rendering him liable to pay a penalty for the full amount of the gratification nonetheless (see *Marzuki* at [62(a)]). Although the principal nonetheless has a right to recover the gratification sum from either the recipient (who is his agent)

or the giver as a civil debt under s 14 of the PCA, we discuss the limitations of that right at [113] and [123]–[125] below.

111 As against our analysis of the various competing interests engaged in the context of corruption offences, the Prosecution makes three responses. First, the Prosecution challenges the idea that the principal's interest ranks ahead of the State's. It submits that recipients should *not* be incentivised to repay the illicitly obtained gratification to their principals because such moneys may be used to commit other corruption offences; instead, the moneys should be removed from circulation by way of disgorgement by the State. We disagree for the simple reason that if a recipient retains the gratification sum until it is disgorged by the State, which the Prosecution's interpretation of s 13(1) of the PCA incentivises, there is more than a mere possibility that *he* may use the gratification sum to commit further corruption offences in the meantime. The suggestion that the *principal* may use the repaid gratification sum to commit corruption offences is, in contrast, a rather fanciful one.

112 There are three other flaws with the Prosecution's argument. First, it is unclear to us how repayment to the principal, who is the victim and whose loss is being made good, can be said to contribute to the illicit circulation of bribe moneys. The fact that s 14 of the PCA entitles the principal to recovery from the recipient directly undermines the Prosecution's submission. In being repaid the gratification sum that was wrongfully diverted by the recipient, the principal is faultless and is simply being compensated for his loss. Second, we reiterate that the State's interest in the context of corruption offences is relatively muted – it is only concerned with ensuring that the recipient does not retain his corrupt gains (see [108] above). As against the principal's strong interest in recovering the moneys that rightfully belong to him, the State's interest ought to recede into the background. Third, and in any event, the Prosecution's construction of

s 13(1) of the PCA does not merely have the effect of incentivising the recipient to retain the gratification sum (for disgorgement by the State) instead of returning that sum to the principal. The effect of the Prosecution's construction is *also* that a recipient who voluntarily repays or surrenders the gratification sum to the principal will, perversely, be worse off than one who does not do so (see *Marzuki* at [62(b)]; see also [93] above). This cannot have been Parliament's intention in enacting s 13 of the PCA.

113 The Prosecution's second argument is that even if the overriding interest is that of the principal, that interest is served by way of recovery of the gratification sum in civil proceedings. Our short answer is that a recipient who voluntarily returns the gratification sum to his principal saves the latter the uncertainty and expense of commencing civil proceedings. This is surely a policy that the law should encourage. Nor should it be overlooked that even if the principal succeeds in the civil proceedings, the recipient may no longer have the funds to pay the judgment debt after paying the penalty to the State.

114 Third, the Prosecution contends that the court should not allow a recipient to "game" the system by repaying the gratification sum to his principal to avoid a penalty, rather than out of real remorse. We find this submission unpersuasive. We emphasise that s 13(1) of the PCA imposes a *penalty*, not a *sentence*; consequently, that provision is concerned with *disgorgement*, not *culpability*. Whether a recipient returns the gratification sum to his principal out of remorse or self-interest, the fact remains that the recipient does not retain the tainted gratification or the benefit thereof. The recipient's remorse is relevant to his sentence in so far as it may be of mitigating weight, but it is simply of no consequence as far as the penalty under s 13(1) of the PCA is concerned.

115 In this connection, we note another difficulty with the Prosecution's position. The Prosecution submits that whether a recipient voluntarily returns the gratification sum to the principal or voluntarily surrenders that sum to the authorities is irrelevant for the purposes of s 13(1) of the PCA but may be of mitigating weight at sentencing. The Judge made a similar observation (see the HC Judgment at [336]). The intractable problem that arises is this: how is a recipient to decide whether to return or surrender the gratification sum if doing so may result in a lower sentence *but* will cause him to be out of pocket? These conflicting positions engage rule of law concerns in that corrupt recipients will be left uncertain as to what exactly the law demands of them.

116 We therefore hold that the legislative purpose underlying s 13(1) of the PCA is to prevent the recipient of the gratification, whether monetary or otherwise, from retaining the benefit of that gratification. This is in line with the holdings in *Marzuki* at [61] and [71], *Tan Kwang Joo v Public Prosecutor* [1989] 1 SLR(R) 457 at [5] and *Public Prosecutor v Tan Kok Ming Michael and other appeals* [2019] 5 SLR 926 at [140].

117 The disgorgement function of s 13(1) of the PCA strongly militates against the Prosecution's interpretation which, at best, only incentivises recipients to surrender bribe moneys to the State. In contrast, our purposive interpretation of s 13(1) of the PCA not only furthers the object of that provision but also does justice to the four main interests engaged in the context of corruption offences. Crucially, our construction of s 13(1) of the PCA better vindicates the interest that is of foremost significance for present purposes – namely, that of the principal.

Conceptualising the possible forms of repayment or disgorgement

Surrender to or seizure by the authorities

118 We now consider the various ways in which the gratification sum may be repaid, returned or disgorged, whether in whole or in part. First, the gratification sum may be disgorged by the authorities, either because the recipient voluntarily surrenders that sum or because his assets have been seized. Whether the gratification sum has been disgorged by the authorities is an eminently relevant fact that the court cannot ignore when quantifying the penalty imposed under s 13(1) of the PCA. After all, the penalty is ultimately paid to the State and is recoverable as a fine, with an imprisonment term imposed in default of payment. The parties all accept that where the gratification sum has been disgorged by the authorities, there is no basis for the court to impose a penalty of the entire gratification sum *on top of* ordering that the disgorged amount be forfeited to the State.

119 If the gratification sum has been disgorged by the authorities in *full*, the court may: (a) order that the disgorged sum be forfeited to the State, *without* imposing a penalty under s 13(1) of the PCA; or (b) impose a penalty under s 13(1) of the PCA for the full gratification sum but order that the penalty be paid out of the disgorged moneys. Regardless of which option the court chooses, it should *also* impose a penalty equivalent to the value of the recipient's ability to use the gratification sum from the time of receipt to the time of disgorgement (see *Marzuki* at [72]). This is to account for the benefit that the recipient would have had – namely, the *use* of the gratification sum from the time of receipt to the time of disgorgement (see *Marzuki* at [81]). To this end, the benefit enjoyed by the recipient can be quantified by, for example, treating the gratification sum as though it was placed in a fixed deposit for 12 months and calculating the

interest payable for the relevant period based on a suitable per annum interest rate.

120 We accept that in cases where the entire gratification sum is disgorged by the authorities immediately after or on the very day of receipt, the recipient's benefit in having had the use of the gratification sum will be negligible. The penalty imposed by the court to account for the value of that benefit will thus be of a token amount. That said, we expect that such cases of almost instantaneous disgorgement by the authorities will be exceedingly rare. They will likely occur only if, for example, the authorities receive a tip-off on an impending bribe and arrest the offenders immediately after the corrupt transaction takes place.

121 On the other hand, if the authorities have only disgorged the gratification sum in *part*, the court should: (a) impose a penalty in respect of the balance amount; or (b) impose a penalty in respect of the entire gratification sum but order that the disgorged moneys be applied towards part payment of the penalty. The court should *additionally* impose a penalty equivalent to the value of the recipient's ability to use the disgorged sum from the time of receipt to the time of disgorgement.

Repayment to the principal

122 We reiterate that the policy of the law is to encourage a recipient to return his ill-gotten gains to his principal (see [109] above). It follows that where the gratification sum has been repaid in whole or in part to the principal, the court should ordinarily deduct the repaid amount from the sum of the penalty imposed under s 13(1) of the PCA. This is so whether the principal recovers the gratification sum from the recipient in civil proceedings or as a result of

voluntary repayment by the recipient. However, even if the principal fully recovers the gratification sum from the recipient, the latter will nevertheless be liable to pay a penalty of an amount that represents the value of his ability to use the gratification sum from the time of receipt to the time of repayment. In other words, the recipient will be treated as having received gratification in the form of a *loan*, rather than a gift, of money.

123 The Prosecution relies on s 14 of the PCA, which allows a principal to recover the gratification sum from either the recipient (who is the principal's agent) or the giver as a civil debt, irrespective of the recipient's or the giver's conviction or acquittal. In this regard, the Prosecution cites the decision in *Leong Wai Kay v Carrefour Singapore Pte Ltd* [2007] 3 SLR(R) 78 ("*Carrefour*"), in which the court held (at [14]) that ss 13 and 14 of the PCA operated independently of each other. According to the Prosecution, if a defendant's conviction (and the attendant penalty imposed) or acquittal has no bearing on the principal's civil claim, then the principal's recovery of the gratification sum as a civil debt should equally be irrelevant to the penalty imposed. At the hearing, the Prosecution confirmed its position that in all cases involving money gratification, the recipient would be liable for 200% of the gratification sum, with the State and the principal entitled to disgorge and to recover 100% of that sum respectively.

124 *Carrefour* concerned a civil claim filed by a principal against its agent *after* the latter had paid the penalty under s 13(1) of the PCA. The appellant in that case was the agent, who argued that, having already disgorged all the bribe moneys received, he was not liable to his principal for the same sums. The court rejected the appellant's argument. It held (at [14]) that the criminal proceedings in relation to s 13 of the PCA were distinct and separate from the civil

proceedings which s 14 of the PCA concerned, and that the principle against double disgorgement did not apply to ss 13 and 14 of the PCA.

125 We note that *Carrefour* did not concern the precise situation at hand, namely, the quantification of the penalty in *criminal* proceedings where a recipient returns the gratification sum to the principal *before* the penalty is imposed. Nonetheless, the court expressly stated in *Carrefour* (at [14]) that the principle against double disgorgement did not apply to ss 13 and 14 of the PCA. We thus accept that *Carrefour* appears to suggest that a recipient who repays all or part of the gratification sum to the principal *before* the court imposes a penalty will remain liable to pay a penalty for the full amount of the gratification. Even though this issue was not squarely before the court in *Carrefour*, we depart from that decision to the extent that it suggests such a recipient would be liable to double disgorgement.

126 Contrary to what the Prosecution submits, disgorgement need not always be on a 200% basis. The notion that a recipient will invariably be liable for 200% of the gratification sum presumes that Parliament had intended to levy a fine of an amount equivalent to the gratification sum – a presumption that we have rejected at [93] above. Where the recipient returns the gratification sum to the principal in full before a penalty is imposed in the criminal proceedings, the gratification will be disgorged on a 100% basis. Only in cases where a penalty is imposed *before* the principal recovers the gratification sum will disgorgement be on a 200% basis.

127 For the purposes of s 13(1) of the PCA, the relevant cut-off point when examining if any part of the gratification sum has been repaid or disgorged is the time at which the penalty is *first* imposed, whether at trial or on appeal. Mr Vergis accepted that any restitution made by the recipient after the penalty

is imposed only goes towards the recipient's *civil* liability to the principal. Hence, the criminal courts should not and will not take into account any restitution that is made *after* the imposition of the penalty. We add that it may be advisable for the criminal courts to inform convicted recipients of this prior to sentencing.

128 Accordingly, if a recipient repays the principal in instalments, the amount that will be deducted from the penalty is the amount that has been repaid as of the date on which the penalty is first imposed. If there are instalments that are imminently due and if the recipient is confident in his ability to pay those instalments on time, his counsel may apply for sentencing to be deferred for a reasonable period, so that the court may take those repayments into account when quantifying the penalty. What constitutes a reasonable period of deferment is, of course, up to the court's discretion.

129 If a convicted recipient unsuccessfully appeals against his conviction and/or sentence, the appellate court should *not* take into account any further repayments that may have been made between the date on which the penalty was imposed by the trial court and the date on which the appeal was decided. On the other hand, if an alleged recipient is acquitted by the trial court but is convicted on appeal, the appellate court should take into account all repayments that have been made to the principal up to the date on which the appellate court imposes a penalty, this being the *first* time that the penalty is imposed.

130 The approach that we have laid out incentivises the recipient to repay the principal promptly and is thus in keeping with the policy of the law (see [109] above). Although a recipient who duly returns the full amount of the gratification to the principal will not be liable to pay a penalty under s 13(1) of the PCA, we do not consider this to be an unsatisfactory outcome. The

gratification would have been disgorged in *full*, which coheres with the very purpose of s 13(1) of the PCA. It bears emphasising, however, that a recipient who delays in making repayment assumes the risk that the court may impose a penalty before the principal recovers the gratification sum and, therefore, the risk of double disgorgement. Such a risk arises from the recipient's deliberate decision to adopt a wait-and-see approach; if that risk materialises, the recipient would have only himself to blame. The risk of double disgorgement should incentivise him to make restitution to the principal with all due dispatch, and certainly *before* the penalty is imposed. We highlight that prompt repayment to the principal benefits the recipient in at least two ways: (a) as an expression of remorse for the purpose of mitigation at sentencing; and (b) the deduction of the amount of the repaid gratification from the penalty sum.

Repayment to the giver

131 We next consider instances in which all or part of the gratification sum has been repaid to the giver. Such cases raise two important considerations: (a) whether the gratification sum is a gift or a loan; and (b) whether the benefit of the gratification has been genuinely disgorged.

132 In cases where money gratification is given as a loan that is subsequently repaid by the recipient, the value of the gratification cannot be equated with the amount of money received (see *Marzuki* at [72] and [79]). Rather, the value of the money gratification should be quantified by reference to the value of the recipient's benefit in having had the use of that sum of money from the time of receipt to the time of repayment, or by adopting some other method that would not further penalise the recipient, who has already repaid the money (see *Marzuki* at [72]). We add that the same holds true where the recipient has only repaid the loan of money *in part*. In such cases, the court should consider any

repayments that have been made towards the loan when quantifying the penalty under s 13(1) of the PCA. The operative cut-off point is the date on which a penalty is first imposed on the recipient; in this regard, we reiterate our holdings at [127]–[130] above.

133 Where the recipient alleges that the money gratification was a loan rather than a gift, the court should examine the surrounding facts carefully to determine if the money gratification was indeed a loan. Some relevant considerations include: whether there was any expectation or likelihood of repayment; the repayment terms (for example, whether there was a repayment schedule); and whether there was an applicable or agreed interest rate. If the facts disclose a *gift* of money masquerading as a loan of money, the penalty amount will be equivalent to the entire sum of money received. In the same vein, if the recipient and the giver originally intended for the sum of money to be a loan but the recipient fails to repay that sum, he should be treated as having been *given* rather than *lent* that sum, for the purposes of s 13(1) of the PCA (see *Marzuki* at [71]).

134 It is also critical that the court considers whether the benefit of the gratification has been *genuinely* disgorged. In some cases, particularly those in the commercial context, the repayment of the gratification sum to the giver may in fact be a ploy to perpetuate a mutually beneficial corrupt scheme. It is not in the public interest to encourage repayments of such a nature. In such instances, the giver is at least as culpable as the recipient and may in fact be the *more* culpable party if he was the one who initiated the corrupt transaction. Where repayments to the giver amount to collusion between the giver and the recipient, the recipient effectively retains the benefit of the gratification, thereby subverting the disgorgement purpose of s 13(1) of the PCA. Such repayments

should therefore *not* be taken into account when the court quantifies the penalty under s 13(1) of the PCA.

135 We stress that the court should be astute in determining whether the repayment to the giver has indeed disgorged the benefit of the gratification received by the recipient, or whether it is merely a ruse to sustain the corrupt arrangement between the recipient and the giver. Only in cases of the former should the repayments to the giver be taken into consideration for the purposes of s 13(1) of the PCA. If the court is satisfied that the repayments to the giver are genuine, it should impose a penalty in respect of: (a) the value of the recipient's ability to use the gratification sum from the time of receipt to the time of disgorgement; and (b) any amount of the gratification that has yet to be repaid.

Concluding observations

136 We conclude this section of the judgment by making three observations. First, it should be noted that where a recipient pays the gratification sum to a third party who is not the principal or the giver, he remains liable to pay a penalty of the full amount of the gratification. In such cases, the recipient *has* retained the benefit of the gratification – he has essentially applied the gratification to his own benefit.

137 Second, we echo the observation in *Marzuki* at [71] that the penalty regime in s 13(1) of the PCA should not consider the *uses* to which the tainted gratification has been put. This will obviate unnecessary and complicated inquiries into whether the gratification was of net benefit or net loss to the recipient (for example, where the gratification sum was lost in gambling or poor investments). In the same vein, any profits that a recipient may have made

through his use of the gratification sum are irrelevant for the purposes of s 13(1) of the PCA. Such profits are properly the subject of restitutionary claims that the principal may bring in civil proceedings.

138 Finally, it bears highlighting that the Prosecution should frame charges under s 6(*a*) of the PCA carefully. The relevant gratification should be particularised with precision as this will affect the value of the gratification and, in turn, the amount of the penalty imposed under s 13(1) of the PCA. In particular, gratification in the form of a *loan* of money should be distinguished from gratification in the form of a *gift* of money; gratification that has been repaid or surrendered (whether in full or in part) should also be distinguished from gratification that has been fully retained by the recipient.

Our answer to the Referred Question

139 In the light of the foregoing, we answer the Referred Question in the *negative*. In cases where all or part of the money gratification has been repaid or disgorged, the quantification of the penalty imposed under s 13(1) of the PCA will depend on the specific circumstances of the repayment or disgorgement, as discussed at [118]–[137] above.

140 We acknowledge that our decision does not provide a neat solution in all cases. For example, one complication arises from the fact that the sum of the penalty imposed under s 13(1) of the PCA depends on whether the court imposes the penalty before or after the principal recovers the gratification sum from the recipient. Where a penalty in respect of the entire gratification sum is imposed, and where the principal *subsequently* recovers that gratification sum in a civil action against the recipient, the recipient may well be liable for 200% of the gratification sum. However, if a recipient repays some or all of the

gratification sum to his principal *before* the conclusion of the criminal proceedings against him, the penalty imposed will be correspondingly reduced (see [125] above). We nevertheless consider that our answer to the Referred Question is the fairest outcome that best takes into account the interests of the State, the principal, the giver and the recipient, without detracting from the general purpose of Part III of the PCA (which is titled "Offences and Penalties", and in which s 13(1) of the PCA is situated) – namely, the deterrence of corrupt practices. Our answer to the Referred Question also furthers the *specific* purpose of s 13(1) of the PCA – which is to prevent the recipient of the gratification from retaining its benefit – by incentivising him to repay the principal promptly.

Applying the answer to the Referred Question to the facts

141 It remains for us to consider the facts of this case. Mr Vergis urges us to deduct the following sums from the penalties that the Judge imposed on Ishibe and Masui:

(a) the sum of $200,000 paid to Sojitz Singapore in full and final settlement of the judgment sum awarded by a Japanese civil court against Ishibe and Masui;

(b) the sum of US$240,000 transferred by Masui to Koh in June 2005 (see [9] above); and

(c) the sums of $33,322.20 and US$138,152.48 (approximately $171,309.07 based on the exchange rate then) that were recovered by the authorities from Masui's frozen bank accounts.

142 We first deal with the settlement sum of $200,000 that Ishibe and Masui paid to Sojitz Singapore. In 2010, Sojitz Japan commenced a civil suit against

Ishibe and Masui in Japan. Ishibe and Masui were held to be jointly and severally liable for a total sum of approximately $875,248.51. Sojitz Singapore registered the Japanese judgment as a judgment of the High Court of Singapore in 2014. Ishibe and Masui eventually reached an agreement with Sojitz Singapore that they would pay a sum of $200,000 in full and final settlement of the judgment debt. That settlement sum was paid in instalments and was fully paid by 15 November 2017, when the trial in the District Court was ongoing. Ishibe and Masui each paid $100,000 towards the settlement sum.

143 The sum of $200,000 has been disgorged from Masui and Ishibe, who no longer retain the benefit thereof. We acknowledge that they enjoyed the benefit of the use of that sum from the time of receipt to the time of repayment to Sojitz Singapore. However, in the absence of any evidence as to how this benefit should be valued, we are not inclined to take this benefit into account for the purposes of s 13(1) of the PCA. A sum of $100,000 (being half of the sum of $200,000) should thus be deducted from the penalty of $1,004,716.50 that the Judge imposed on Masui and Ishibe each.

144 We turn next to the sum of US$240,000 paid by Masui to Koh in June 2005. Masui and Ishibe contributed equally to this sum. In our view, there is no basis for deducting this sum from the penalties imposed, as Mr Vergis conceded before us. We agree with the Judge that the purpose of this payment was to prop Chia Lee up to ensure the continuation of the profit-sharing arrangement (see the HC Judgment at [307]). Consequently, the payment of US$240,000 was not restitution but an application of Masui's and Ishibe's ill-gotten gains. This much is clear from the fact that Masui and Ishibe *continued* to receive payments from Koh thereafter, until November 2007. Given that Masui and Ishibe effectively retained the benefit of that sum of US$240,000, we do not deduct that sum from the penalties payable by them.

145 As for the sums of $33,322.20 and US$138,152.48 (or approximately $171,309.07) that were recovered by the authorities, those sums should be taken into account for the purposes of s 13(1) of the PCA. The court may either deduct those sums from the penalties imposed or order that those sums be used to make part payment of the penalties for the full amount of the gratification received (see [121] above). The Judge adopted the latter approach (see the HC Judgment at [338]) and his order stands. The sums that were seized by the authorities should thus not be deducted from the penalties. In addition, we accept that Masui and Ishibe would have enjoyed the benefit of the use of those sums from the time of receipt to the time of disgorgement by the authorities. However, given the lack of evidence before us as to how that benefit should be valued, we decline to impute any value to that benefit for the purposes of s 13(1) of the PCA.

146 In the circumstances, a sum of $100,000 should be deducted from the penalty that the Judge imposed on Masui and Ishibe each (see [143] above). We therefore reduce the penalty payable by each of them from $1,004,716.50 to $904,716.50.

147 It follows that the default sentence of 12 months' imprisonment imposed by the Judge should also be recalculated. That default sentence was imposed in respect of the aggregate sum of $1,205,660.50 (comprising a fine of $200,944 and a penalty of $1,004,716.50) payable by Masui and Ishibe each (see [19] above). It appears that the Judge calibrated the default sentence on the basis of one month's imprisonment for roughly every $100,000 unpaid. As the aggregate sum payable by Masui and Ishibe each has been reduced to $1,105,660.50, we accordingly reduce the default sentence to 11 months' imprisonment.

Conclusion

148 In conclusion, we answer the Referred Question in the negative, although the quantification of the penalty imposed under s 13(1) of the PCA will depend on the precise circumstances of the repayment or disgorgement.

149 The imprisonment term of 43 months and three weeks, as well as the fine of $200,944, remains undisturbed. However, we reduce the penalty payable by Masui and Ishibe each to $904,716.50. They are hence each liable to pay a reduced aggregate sum of $1,105,660.50, and the default sentence is accordingly reduced to 11 months' imprisonment.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

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