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

[2022] SGHC 70

Criminal Case No 9 of 2022

Between

Public Prosecutor

And

Juandi bin Pungot

JUDGMENT

[Criminal Law — Offences — Property — Criminal misappropriation of property]
[Criminal Law — Statutory offences — Prevention of Corruption Act]
[Criminal Law — Statutory offences — Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act]

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Public Prosecutor
v
Juandi bin Pungot

[2022] SGHC 70

General Division of the High Court — Criminal Case No 9 of 2022
Hoo Sheau Peng J
8 February 2022

31 March 2022 Judgment reserved

Hoo Sheau Peng J:

Introduction

1 The accused is one of the masterminds of a large-scale conspiracy which operated for more than a decade to misappropriate gas oil worth around S$128m belonging to Shell Eastern Petroleum Private Limited ("Shell") from its facility at Pulau Bukom (the "Pulau Bukom facility").

2 There are 85 charges against the accused. He has pleaded guilty to 36 of them as follows:[1]

(a) 20 charges under s 408 read with s 109 of the Penal Code (Cap 224, Rev Ed 2008) ("PC") and s 124(4) of the Criminal Procedure Code

[1] Schedule of Offences ("SOO").

(Cap 68, 2012 Rev Ed) ("CPC"), for abetment by engaging in a conspiracy to commit criminal breach of trust as servant ("CBT charges"). The total value of the gas oil involved is S$93,835,793.49.

(b) Ten charges under s 47(1)(*b*) punishable under s 47(6)(*a*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A) ("CDSA"), with five of the charges read with s 124(4) of the CPC, for converting or transferring or removing out of the jurisdiction the benefits of criminal conduct ("CDSA charges"). The total sum involved is S$2,684,908.43.

(c) Six charges under s 6(*b*) read with s 29(*a*) of the Prevention of Corruption Act (Cap 241) ("PCA"), with five of the charges read with s 124(4) of the CPC, for engaging in a conspiracy to corruptly give gratification to surveyors, involving a total sum of US$145,000 and S$10,000 ("PCA charges").

3 The remaining 49 charges are to be taken into consideration for the purpose of sentencing. This is my decision on sentence.

Facts

4 I begin by setting out the pertinent portions of the Statement of Facts. For Shell, the Pulau Bukom facility is its largest petrochemical production and export centre in the Asia Pacific region.

5 The accused is a 45-year-old Singaporean. He joined Shell on 1 June 2004. At the material time, he was deployed as a Shore Loading Officer, assigned to Team D, at the Pulau Bukom facility. In that capacity, the accused was primarily tasked to facilitate the transfer of Shell's petroleum products to

client vessels. The accused tendered his resignation on 5 December 2017, but this was superseded by his termination with effect from 28 December 2017.[2]

The CBT charges

6 Between 2007 and 2018, the accused was part of a conspiracy with his co-conspirators from Team D to dishonestly misappropriate gas oil from the Pulau Bukom facility by illegally transferring gas oil out of the facility onto vessels. Each instance of misappropriation was often referred to as an "illegal loading".[3]

7 Generally, to broker a deal to sell misappropriated gas oil, a Shore Loading Officer of the syndicate engaged with the captain of a vessel to discuss the sale and purchase of the gas oil.[4] The misappropriated gas oil was sold at a price lower than its prevailing estimated market value as derived from the S&P Global Platts index.[5] Broadly, the criminal proceeds were split amongst all co-conspirators even if they were not present during the illegal loading, so as to prevent any unhappiness among the co-conspirators.[6]

8 When the accused became involved in the dishonest misappropriation of gas oil in 2007, the fellow mastermind was Abdul Latif bin Ibrahim ("Latif"). Further co-conspirators were recruited. They were Muhammad Ashraf bin Hamzah ("Ashraf"), Tiah Kok Hwee ("Tiah") and Muzaffar Ali Khan

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2 Statement of Facts ("SOF") at paras 1, 2 and 98.

3 SOF at para 11.

4 SOF at para 28.

5 SOF at para 27.

6 SOF at paras 25 and 26.

("Muzaffar"). With the involvement of Ashraf, Tiah, and Muzaffar, Latif and the accused were able to expand the scheme to involve more bunker ships. Subsequently, it was discovered that Latif had retained approximately half of the proceeds prior to splitting the remainder with the accused and the other co-conspirators. The parties fell out, and the scheme came to a halt.[7]

9 In mid-2014, the accused, with the remaining co-conspirators, resumed their criminal activities without Latif. They established contacts with other vessels willing to participate in the illegal loadings. They also successfully recruited three other colleagues, namely Muhamad Farhan bin Mohamed Rashid, Cai Zhizhong, and Koh Choon Wei, into the scheme. Between 2014 and 2017, the accused and his co-conspirators entered into agreements to perform illegal loadings for various vessels, including those belonging to Sentek Marine & Trading Pte Ltd, Sirius Marine Pte Ltd and Prime Shipping Corporation ("Prime Shipping") which is based in Vietnam.[8] One other colleague, Sadagopan Premnath ("Sadagopan"), also joined the syndicate.[9]

10 To evade detection over the long period of time, the accused and the co-conspirators relied on a combination of methods. These included configuring the flow of misappropriated gas oil through routes that avoided custody transfer meters, ensuring that multiple pumps and tanks were moving at the same time (including unnecessary tank-to-tank transfers) to mask the misappropriation, hiding the misappropriation of gas oil from a tank by shifting production of gas oil into the same tank (such that the level in the tank appeared balanced or even

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7 SOF at paras 13 – 18.

8 SOF at paras 19 – 24.

9 SOF at paras 4 and 23.

to be increasing while the misappropriation was taking place), and timing the misappropriation of gas oil vis-à-vis the legitimate loading of gas oil.[10]

11 Relying on their combined in-depth knowledge of Shell's internal systems and processes, the accused and the co-conspirators took further steps to avoid detection by their supervisors and colleagues. These measures included tampering with the bunker meter (if the misappropriated gas oil was being transferred to a bunker ship), stationing a co-conspirator at the control panel to mask the movement of misappropriated gas oil by manipulating the control panel, and tampering with the orientation of the CCTV cameras to ensure that their illegal activities were not recorded.[11] For many of the transactions, the accused also paid off independent surveyors to turn a blind eye to the excess misappropriated gas oil being loaded onto the vessels.[12]

12 The details of the CBT charges, including the period of the offence, the volume of gas oil misappropriated, the value of misappropriated gas oil, the vessels, the number of illegal loadings and the co-conspirators involved are set out at Annex A.[13] The total volume of misappropriated gas oil in the CBT charges is 143,157 metric tonnes, with a total value of S$93,835,793.49.[14] No restitution has been made to Shell for the offences.[15]

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10 SOF at para 29.

11 SOF at para 30.

12 SOF at para 31.

13 SOF at para 33.

14 SOO.

15 SOF at para 35.

13 As stated at [5] above, the accused left Shell in December 2017. In part, this was because he had heard rumours that there were investigations into the misappropriation of gas oil. Nonetheless, he continued to be involved in the syndicate and assisted in the collection and distribution of the proceeds from the illegal loadings.[16]

The CDSA charges

14 Investigations revealed that the accused obtained criminal benefits of at least S$5,630,398.68 through the scheme. Between 2012 and 2018, the accused converted, transferred or removed a sum of S$3,417,201.32, which in whole represented the benefits from criminal conduct, by spending the criminal proceeds on local and overseas properties, foreign exchange trading, vehicles, as well as investments in local and foreign businesses. Substantial assets have been seized or frozen.[17] The total amount in the CDSA charges involves S$2,684,908.43, and the details are set out at Annex B.[18]

The PCA charges

15 Between 2014 and 2017, the accused and Muzaffar engaged the assistance of surveyors from Intertek Testing Services Pte Ltd ("Intertek") and SGS Testing & Control Services Singapore Pte Ltd ("SGS") to facilitate their misappropriation of gas oil. Surveyors from SGS and Intertek were engaged by Shell to conduct inspections of the quantity of gas oil supplied to vessels by Shell. Following these inspections, the surveyors would prepare ullage reports

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16 SOF at paras 98 – 99.

17 SOF at paras 70 – 71.

18 SOF at paras 36 – 37.

for Shell and their respective employers to show the amount of cargo loaded onto the vessel.[19]

16 Together with Muzaffar, the accused approached the surveyors and entered into an arrangement to pay them cash in exchange for their forbearing to accurately report the amount of cargo loaded onto their vessels. The surveyors would either turn a blind eye to the unauthorised loading of cargo or omit to inspect the non-nominated tanks of the vessels which had received misappropriated gas oil. Non-nominated tanks were tanks which were not designated to receive any cargo. Payment was made to all the surveyors even if they did not perform the inspection of the specific vessel to keep them quiet about the misappropriation of the gas oil. The moneys were deducted from the proceeds of the sale of the misappropriated gas oil.[20]

17 The PCA charges involved six surveyors (five were employed by Intertek and the remaining surveyor was employed by SGS), and a total gratification sum of US$145,000 and S$10,000. The details are set out in Annex C.

Impact on Shell

18 Shell expended significant efforts to identify the reason for the unidentified oil loss at the Pulau Bukom facility. Between 2015 and 2017, Shell engaged: (a) a group of Hydrocarbon Mass Balance experts from Shell's other offices to conduct a technical and process review at the facility; (b) a third-party consultant known as Trident Management Consulting Inc to review its

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19 SOF at paras 72 – 74.

20 SOF at paras 76 – 77.

hydrocarbon loss; and (c) a global multidisciplinary team of Shell analysts to monitor tank movements.[21] On 1 August 2017, Shell lodged a police report regarding the unidentified loss of fuel.[22] Since then, Shell has taken numerous measures to improve its processes at the facility. By the end of 2020, the estimated costs incurred and to be incurred by Shell to manage the consequences of the long-term misappropriation is in the region of S$6m.[23]

Conviction

19 The accused admitted to the facts set out in the Statement of Facts. As I found that the elements of the CBT charges, the CDSA charges and the PCA charges have been established beyond a reasonable doubt, I convicted the accused of the 36 charges.

Charges taken into consideration

20 The accused admitted to having committed the offences in the 49 remaining charges. The Prosecution and the accused consented to these being taken into account for sentencing ("TIC charges"). The charges are as follows:

(a) 20 charges under s 408 read with s 109 of the PC and s 124(4) of the CPC, for abetment by engaging in a conspiracy to commit criminal breach of trust as servant, involving gas oil with a total value of S$33,903,610.74;

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21 SOF at paras 95 – 96.

22 SOF at para 7.

23 SOF at para 97.

(b) 21 charges under s 47(1)(*b*) punishable under s 47(6)(*a*) of the CDSA for converting or transferring the benefits of criminal conduct, and one charge under s 47(1)(*c*) punishable under s 47(6)(*a*) of the CDSA for using the benefits of criminal conduct, involving a total sum of S$732,292.89; and

(c) seven charges under s 6(*b*) read with s 29(*a*) of the PCA, with five of the charges read with s 124(4) of the CPC, for engaging in a conspiracy to corruptly give gratification, involving a total sum of US$43,000 and S$10,000.

The parties' sentencing positions

21 In relation to the global sentence, the Prosecution argues for 359 months' imprisonment (a month short of 30 years) to be imposed,[24] while the Defence submits that 180 months' imprisonment (15 years) is appropriate.[25]

The CBT charges

22 For offences under s 408 of the PC, the Prosecution proposes the adoption of a five-step harm-culpability sentencing framework which mirrors the frameworks set out in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev*") and *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 ("*Huang Ying-Chun*").[26] Broadly, the proposed framework comprises five steps:[27]

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24 Prosecution's Sentencing Submissions ("PSS") at para 4.

25 Plea in mitigation ("PIM") at para 6(g).

26 PSS at para 21.

27 PSS at paras 22 – 29.

(a) Step 1: Consider the offence-specific factors and identify the level of harm caused and the level of the offender's culpability. The factors that go towards harm include, *inter alia*, the amount involved and the involvement of a syndicate. The factors that go towards culpability include, *inter alia*, the level of sophistication and the duration of offending.

(b) Step 2: Identify the applicable indicative sentencing range. The proposed sentencing matrix is as follows:

Culpability **Harm**	**Low culpability**	**Medium culpability**	**High culpability**
Slight harm	Up to 15 months' imprisonment	15 to 45 months' imprisonment	45 to 90 months' imprisonment
Moderate harm	15 to 45 months' imprisonment	45 to 90 months' imprisonment	90 to 135 months' imprisonment
Severe harm	45 to 90 months' imprisonment	90 to 135 months' imprisonment	135 to 180 months' imprisonment

(c) Step 3: Identify the appropriate starting point within the indicative sentencing range.

(d) Step 4: Make adjustments to the starting point to account for offender-specific factors, such as a guilty plea or relevant antecedents.

(e) Step 5: Make further adjustments to take into account the totality principle.

23 On an application of the proposed sentencing framework, the Prosecution argues the following:

(a) Step 1: The harm caused by the accused's offences is severe and his culpability is high.[28]

(i) For harm, the Prosecution highlights that the value of property misappropriated is immense, that the offences were committed against a strategic industry which is a pillar of Singapore's economy, that the offences were a syndicated group offence involving transnational elements, and that the offences were exceptionally difficult to detect.[29]

(ii) For culpability, the Prosecution contends that the accused was one of the masterminds of the conspiracy, that the accused profited significantly from his crimes, and that he betrayed his employer's trust.[30]

(b) Step 2: Based on the harm caused and the culpability of the accused, the broad indicative sentencing range for each of the charges would range from 135 to 180 months' imprisonment, *ie*, under high culpability and severe harm.[31]

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28 PSS at para 31.

29 PSS at paras 32 – 47.

30 PSS at paras 48 – 55

31 PSS at para 56.

(c) Step 3: Within the indicative sentencing range of 135 to 180 months' imprisonment, the Prosecution locates the indicative starting points for each charge based on the value involved. These are set out below at [26].

(d) Step 4: The Prosecution has identified one aggravating and one mitigating factor. The aggravating factor is the other 20 similar charges the accused has consented to be taken into consideration for sentencing.[32] The mitigating factor is the accused's early plea of guilt, for which the Prosecution has proposed a substantial reduction of 40% from the starting points.[33] Accordingly, the Prosecution submits for the sentences set out below at [26].[34]

(e) Step 5: By s 307(1) of the CPC, at least two sentences are to run consecutively. On an application of the one-transaction rule and the totality principle, the Prosecution is seeking three sentences for the CBT charges to run consecutively.

24 The Defence agrees with the sentencing framework proposed by the Prosecution but disagrees with the Prosecution's submission that the harm caused was severe and that the accused's culpability was high.[35] For harm, the Defence argues that the severe harm was only caused in the charges involving more than S$4.61m, while moderate harm was caused in the remaining charges. In terms of culpability, the Defence submits that the accused's culpability was

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32 PSS at para 62.

33 PSS at para 65.

34 PSS at para 65.

35 PIM at paras 8 – 10.

only medium. There was no transnational element to the offences, and the accused was only one of the masterminds. The Defence further highlights that Latif recruited the accused to join the scheme in 2007.[36]

25 Based on the above, the Defence proposes a different set of indicative starting points. The Defence further agrees with the substantial reduction of approximately 40% to be applied to the indicative starting points based on the accused's plea of guilt.[37]

26 The parties' submissions on the individual CBT charges are as follows:

Charge number	**Date**	**Value US$ (S$)**	**Prosecution**		**Defence**	
			Starting point	Proposed sentence	Starting point	Proposed sentence
2	December 2017	4,953,033.17 (6,656,840.81)	165 months	99 months	115 months	69 months
3	November 2017	6,517,196.40 (8,833,894.05)	170 months	102 months	130 months	78 months
4	October 2017	4,253,608.15 (5,766,851.75)	160 months	96 months	105 months	63 months
5	September 2017	3,903,368.91 (5,286,958.13)	155 months	93 months	100 months	60 months
6	August 2017	4,324,915.44 (5,893,619.70)	160 months	96 months	105 months	63 months
7	July 2017	3,282,409.51 (4,506,342.96)	155 months	93 months	85 months	51 months
8	June 2017	4,310,757.36 (5,958,116.56)	160 months	96 months	110 months	66 months
9	May 2017	2,880,729.88 (4,007,369.01)	150 months	90 months	80 months	48 months
10	April 2017	4,600,035.36 (6,408,242.94)	160 months	96 months	112 months	67 months

[36] PIM at para 11.

[37] PIM at paras 17 – 18.

Charge	Date	Value	Prosecution		Defence	
11	March 2017	3,521,471 (4,922,997.80)	155 months	93 months	90 months	54 months
12	February 2017	3,513,309.66 (4,953,855.87)	155 months	93 months	90 months	54 months
15	November 2016	2,284,346 (3,237,393.17)	145 months	87 months	70 months	42 months
16	October 2016	2,105,346.25 (2,894,268.67)	145 months	87 months	65 months	39 months
17	September 2016	2,114,595.86 (2,858,164.81)	145 months	87 months	65 months	39 months
19	July 2016	2,608,291.98 (3,507,561.20)	150 months	90 months	73 months	44 months
20	June 2016	3,305,700.86 (4,444,936.51)	150 months	90 months	83 months	50 months
22	April 2016	2,774,806.21 (3,732,977.14)	150 months	90 months	75 months	45 months
35	February 2015	3,048,224.74 (4,121,631.57)	150 months	90 months	80 months	48 months
39	September 2014	2,428,091 (3,052,359)	145 months	87 months	67 months	40 months
40	August 2014	2,245,773.64 (2,791,411.86)	145 months	87 months	63 months	38 months

The CDSA charges

27 The Prosecution relies on the precedents of *Chong Kum Heng v Public Prosecutor* [2020] 4 SLR 1056 ("*Chong Kum Heng*") and *Public Prosecutor v Ho Man Yuk and others* [2017] SGDC 23 ("*Ho Man Yuk*"). The Prosecution highlights that the accused spent his criminal proceeds on various assets of value or with the potential to appreciate or ones that were difficult to trace.[38] The Defence also relies on *Ho Man Yuk* but argues that a 40% discount, as applied for the CBT charges, ought to apply.

[38] PSS at para 77.

28 Accordingly, the Prosecution[39] and the Defence seek the following sentences:[40]

Charge number	Date	Value	Prosecution	Defence
41	12 April 2013 to 2 January 2018	S$432,678 (payment for a condominium unit at Regentville, 6 Hougang Street 92, #05-04, Singapore)	18 months	7 months
42	17 August 2017 to 2 January 2018	S$199,114.14 (conversion into US$ for forex trading)	12 months	6 months
43	20 June 2017 to 27 December 2017	S$123,588 (purchase of Mercedes Benz GLC250)	11 months	6 months
44	13 February 2017 to 10 November 2017	S$252,000 (deposit of sums into two OCBC corporate accounts)	14 months	6 months
45	Between April to October 2017	S$173,637.95 (handing cash to Lim Choon Keong for renovations at Malaysian restaurant which the accused invested in)	12 months	6 months

39 PSS at para 74.

40 PIM at para 21.

Charge number	Date	Value	Prosecution	Defence
46	September 2017	S$100,000 (handing cash to Tan Siew Choon as capital for investment product)	10 months	6 months
47	November 2015 to 2017	S$480,000 (handing over the sum to Sriwasuth Chayanuch for purchase of property in Thailand)	18 months	7 months
48	29 July 2014 to 3 May 2017	S$140,426.79 (purchase of Toyota Harrier)	11 months	6 months
49	4 January 2012 to 1 May 2016	S$552,185 (purchase of casino chips for gambling)	20 months	8 months
50	1 October 2013 to 11 March 2016	S$231,278.55 (remittance of money to purchase another property in Thailand)	13 months	6 months

The PCA charges

29 Turning to the PCA charges, the Prosecution argues that the accused's offences fall squarely within Category 2 as identified in *Public Prosecutor v*

Syed Mostofa Romel [2015] 3 SLR 1166 ("*Romel*").[41] Relying on *Romel* and *Lim Teck Chye v Public Prosecutor* [2004] 2 SLR(R) 525 ("*Lim Teck Chye*"), the Prosecution seeks the sentences which are set out at [30] below. Similarly, the Defence submits that the offences fall within Category 2 of *Romel* but argues for a different set of sentences.

30 In summary, the parties seek the following sentences:[42]

Charge number	Date	Bribe amount	Prosecution	Defence
73	Between 2014 and 2015	US$15,000	12 months	7 months
75	Between 2014 and 2015	US$15,000	12 months	7 months
76	2014	S$10,000	10 months	7 months
78	Between 2014 and 2015	US$15,000	12 months	7 months
80	Between 2016 and 2017	US$90,000	30 months	15 months
85	Between 2015 and 2017	US$10,000	10 months	7 months

The global sentence

31 Turning to the global sentence, the Prosecution argues for six sentences to run consecutively. In brief, this consists of the sentences for three CBT charges, two CDSA charges and one PCA charge as follows:

Charge number	Offence	Date	Value	Proposed sentence
2	CBT	December 2017	US$4,953,033.17 S$6,656,840.81	99 months

41 PSS at para 78.

42 PSS at para 79 and PIM at para 24.

Charge number	Offence	Date	Value	Proposed sentence
6	CBT	August 2017	US$4,324,915.44 S$5,893,619.70	96 months
10	CBT	April 2017	US$4,600,035.36 S$6,408,242.94	96 months
41	CDSA	12 April 2013 to 2 January 2018	S$432,678	18 months
49	CDSA	4 Jan 2012 to 1 May 2016	S$552,185	20 months
80	PCA	Between 2016 and 2017	US$90,000	30 months
Global sentence				**359 months' imprisonment**

32 The Prosecution submits that such a global sentence adequately reflects the totality of the accused's criminal conduct. In seeking the sentences for the three CBT charges to run consecutively, the Prosecution argues that this reflects the duration and severity of offending, the numerous aggravating factors and the accused's role as a mastermind.[43] As for the sentences for the two CDSA charges and one PCA charge to run consecutively, this is necessary to reflect the violation of separately protected legal interests.[44] To round off, the Prosecution submits that the global sentence is not crushing, and is warranted for the accused's exceptionally serious offences.

33 In contrast, the Defence is submitting that only sentences for three CBT charges should be ordered to run consecutively, as follows:

Charge number	Date	Value	Proposed sentence

[43] PSS at para 84(a).

[44] PSS at para 84(b).

Charge number	Date	Value	Proposed sentence
2	December 2017	US$4,953,033.17 S$6,656,840.81	69 months
5	September 2017	US$3,903,368.91 S$5,286,958.13	60 months
7	July 2017	US$3,282,409.51 S$4,506,342.96	51 months
Global sentence			**180 months' imprisonment**

34 The Defence contends that the sentences for the PCA and CDSA charges should run concurrently as the moneys involved in these charges flow from the CBT charges.[45] The Defence further argues that the global sentence sought by the Prosecution is in breach of the totality principle. It is crushing, not in keeping with the accused's past conduct, and substantially above the normal level of sentences for the most serious of the individual offences committed.[46] Based on the Prosecution's sentencing position, had the accused claimed trial, it would have resulted in a sentence of almost 60 years' imprisonment which is wholly manifestly excessive. As such, the Defence argues that the Prosecution has not properly applied the discount of 40%.[47]

35 The Defence also highlights the following mitigating factors:[48]

(a) The accused has been cooperative with the authorities throughout the investigations. This led to the voluntary disclosure of the accused's assets from criminal proceeds which were then surrendered.

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45 PIM at para 27.

46 PIM at para 28.

47 PIM at paras 30 – 31.

48 PIM at paras 32 – 35.

(b) The accused is a first-time offender who is sincerely remorseful and has given his undertaking not to commit the offences again.

(c) The accused's personal circumstances, such as his familial and health-related problems.

Decision

36 By way of an overview, the offences committed were exceptionally serious. The massive scale of offending is unprecedented. The length of offending is substantial. A sophisticated syndicate was involved. Foreign buyers were involved. The offending hit at the heart of the bunkering and petrochemical industry, a key component of Singapore's economy. As the Prosecution submits, the offending affects Singapore's reputation as a commercial hub. Given these factors, I agree with the Prosecution that general deterrence is the predominant sentencing principle: *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [25(b)] and [42] in relation to offences involving syndication and a transnational element; *Ding Si Yang v Public Prosecutor and another appeal* [2015] 2 SLR 229 at [41] in relation to offences which affect Singapore's international standing. Furthermore, as the offences were premeditated, specific deterrence is also a relevant sentencing consideration: *Law Aik Meng* at [21] – [23]. Finally, the sentencing principle of retribution is also engaged, as it is trite that the punishment must reflect and befit the seriousness of the crime: *Public Prosecutor v Tan Fook Sum* [1999] 1 SLR(R) 1022 at [16]. With that, I go to the sentences for the different groups of offences.

The CBT charges

37 The prescribed punishment under s 408 read with s 109 of the PC is imprisonment for a term which may extend to 15 years and liability to a fine.

Whether to adopt the proposed sentencing framework for s 408 of the PC

38 I begin with the issue of whether to adopt the proposed sentencing framework for s 408 of the PC. Without citing actual statistics, when queried, the Prosecution submits that there is an increasing prevalence of financial crimes.[49] On a *prima facie* basis, this appears to suggest that it would be appropriate for a framework to be established. More specifically, the Prosecution has highlighted three reasons for establishing a sentencing framework. First, a framework provides a principled approach to determine the appropriate sentence in a manner that will engage the full spectrum of punishment. Second, the existing sentencing precedents are of limited assistance due to the unprecedented scale and complexity of the present case. Third, a framework will ensure consistency and parity in sentencing for the other co-conspirators. Two of the accused's co-conspirators, Ashraf and Sadagopan, have pleaded guilty and have been sentenced in the State Courts (based on the application of the proposed sentencing framework).[50] As I stated earlier, the Defence did not raise any objections to the Prosecution's proposed sentencing framework.

39 Having considered parties' arguments, I decline to adopt the proposed sentencing framework. Taking the third point first, I agree that there is a need

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49 Transcript, 8 February 2022, p 49 line 29 to p 50 line 5.

50 PSS at paras 18 – 20.

to ensure consistency and parity in sentencing the co-conspirators in the criminal enterprise. However, to achieve this, it is not necessary for a sentencing framework to be adopted. At its nub, the principle of parity is an "important aid to the sentencing court to ensure that sentencing of co-offenders is done in a manner that is broadly consistent and fair". What is consistent and fair, in turn, depends on the facts of the case at hand: *Chong Han Rui v Public Prosecutor* [2016] SGHC 25 at [52]. Even in the absence of a sentencing framework, consistency and parity remain key principles in the sentencing of the other co-conspirators who have yet to be dealt with.

40 In *Lim Bee Ngan Karen v Public Prosecutor* [2015] 4 SLR 1120 at [58], the High Court observed that in cases where the sentencing of co-offenders takes place before different sentencing judges, it is pertinent for the Prosecution to place before the court "all relevant material pertaining to the sentences meted out to earlier-sentenced co-offenders". Albeit made in a different context, I find the comments to be apposite. While Ashraf and Sadagopan have been sentenced in the State Courts based on the proposed sentencing framework, what is material is that I have access to the full details and reasons for those decisions. These are set out in *Public Prosecutor v Muhammad Ashraf bin Hamzah* [2021] SGDC 265 ("*Ashraf*")[51] and *Public Prosecutor v Sadagopan Premnath* [2021] SGDC 186 ("*Sadagopan Premnath*"),[52] which have been duly furnished by the Prosecution. A sentencing framework is not the only response to this concern raised by the Prosecution.

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51 The appeal in MA 9230 of 2021 was withdrawn on 8 December 2021.

52 The appeal in MA 9162 of 2021 was withdrawn on 18 February 2022

41 Regarding the second point, while the present case is unprecedented in scale and complexity, this does not render the existing sentencing precedents otiose. As amply demonstrated by the Prosecution in explaining the first step of the proposed framework, there are well-established sentencing factors that go towards assessing the harm and culpability for offences under s 408 of the PC. I would further add that on the Prosecution's argument, the fact that there are few sentencing precedents militates *against* the establishment of a sentencing framework. Without the aid of a larger pool of sentencing precedents, there is a risk of arbitrarily setting the sentencing ranges, and the further risk of arbitrarily locating cases within the proposed indicative sentencing ranges. As observed by the High Court in *Lau Wan Heng v Public Prosecutor* [2021] SGHC 240 at [37]:

> 37 … Where there are few sentencing precedents, there may be difficulty in obtaining a sense of the prevailing sentencing practice, especially for newer or less commonly encountered offences. *Specifying a sentencing framework under such circumstances may be an exercise in abstraction. This is particularly so where the offence in question can be committed in factually diverse situations involving varying degrees of harm and/or culpability.*
>
> [Emphasis added]

42 Indeed, I note that at the end of the day, both the Prosecution and the Defence rely on the amounts involved to suggest indicative starting points within the proposed indicative sentencing ranges. For the Prosecution, this involves various indicative starting points within the high culpability-severe harm range of 135 to 180 months' imprisonment. For the Defence, this involves various indicative starting points within the medium culpability-moderate harm range of 45 to 90 months' imprisonment and the medium culpability-severe harm range of 90 to 135 months' imprisonment. However, there are insufficient precedents involving similar amounts to guide this process.

43 Turning lastly to the first point, the Prosecution does not go any further beyond stating common observations regarding the benefits of a sentencing framework. I note that the Prosecution is not arguing that the courts have not been using the full range of sentences as prescribed nor has provided any cases to demonstrate so. There is also no suggestion by the Prosecution that the existing body of sentencing precedents reflect serious inconsistencies or anomalies. This is unlike the state of affairs encountered in *Huang Ying-Chun*, which the Prosecution relies on. There, the High Court observed (at [33]) in the context of s 44(1)(*a)* of the CDSA that the "various sentences which have been ordered in previous cases do not sit well or easily with each other".

44 In sum, I am not persuaded by the Prosecution's submissions in justifying the need for a sentencing framework. I should add that in oral submissions, the Prosecution argues that while the *modus operandi* of offences under s 408 of the PC may vary, the essence of the offence does not vary – essentially, trust is placed in an individual who thereafter abuses the trust. However, in my view, the offences under s 408 of the PC are factually diverse. This is apparent on an examination of the substratum of s 408 of the PC, *ie*, criminal breach of trust ("CBT") under s 405 of the PC. The constituent elements of s 405 of the PC are that the accused must have been entrusted with a property or have dominion, and that the accused must have committed one of the following acts: (a) misappropriated; (b) converted; (c) used or disposed in violation of a direction of law; (d) used or disposed in violation of a legal contract; or (e) suffering any other person to do any of (a) to (d): Stanley Yeo, Neil Morgan, and Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3rd Ed, 2018) at para 14.23. On an analysis of the *actus reus* of s 405 of the PC, it is evident that CBT offences lend themselves to numerous permutations that could occur in varying settings. Further

complications are introduced by the different categories of agents or clerks in an offence under s 408 of the PC. To this end, I have some reservations whether a single sentencing framework would adequately address the offences under s 408 of the PC. With that, I turn to the factors relevant for my determination.

Aggravating and mitigating factors

45 In relation to CBT offences, the value of the property misappropriated is the starting consideration for sentencing: *Public Prosecutor v Lam Leng Hung and other appeals* [2017] 4 SLR 474 ("*Lam Leng Hung*") at [367]. All other things being equal, the larger the amount dishonestly misappropriated, the greater the culpability of the offender and the more severe the sentence of the court: *Wong Kai Chuen Philip v Public Prosecutor* [1990] 2 SLR(R) 361 at [18]. Based on the value of the gas oil misappropriated, ranging between S$2.79m to S$8.83m, it is clear that stiff sentences are warranted for each charge. By any measure, the sums involved are substantial.

46 While the value of the property misappropriated is primary to the sentencing of CBT offences, the sentences to be imposed do not have to bear a relationship of linear proportionality with the sums involved: *Public Prosecutor v Tan Cheng Yew* [2013] 1 SLR 1095 ("*Tan Cheng Yew*") at [184]. In the exercise of its discretion, the court is never restricted to the application of a mathematical formula based on the amount in question. Instead, the appropriate sentence to be imposed is arrived at having regard to the totality of the circumstances: *Lam Leng Hung* at [368].

47 Apart from the high value of the gas oil misappropriated, the facts and circumstances disclose *at least* six aggravating factors. Given the overlapping nature of some of the considerations, I subsume certain matters, especially the

duration of offending and the difficulty in detecting the offences, within these factors.

48 First, the offences were premeditated, planned and sophisticated in nature. Exploiting their in-depth knowledge of Shell's systems, the accused and the co-conspirators were able to conceal their offending for a prolonged period of time. The steps undertaken, such as configuring the flow of gas oil to avoid routes with custody transfer meters, demonstrate a deviousness in evading detection. Their efforts to cover their tracks clearly paid off as Shell had to invest a significant amount of effort to uncover the unexplained oil losses.

49 Second, the offences were committed as part of a criminal syndicate. Syndicate involvement raises the spectre of organized crime which has a deleterious effect on Singapore as a whole: *Logachev* at [54]. It stands alone as an aggravating factor. Here, it is apparent that the element of syndication enabled the accused and his co-conspirators to execute and sustain the well-oiled machinery of criminality over time, through the coordination and participation of various individuals.

50 Third, there was a transnational element involved because of the sale of the misappropriated gas oil to foreign vessels, such as the Vietnamese vessels from Prime Shipping. What is material is that the scheme has a transnational element; it is not necessary for the accused to cross borders to execute the scheme: *Huang Ying-Chun* at [113]. This disposes of the Defence's objection to this aggravating factor, which rests on the fact that the loading of the gas oil occurred within Singapore's territorial waters. In *Huang Ying-Chun*, the High Court found that a transnational element was involved where the accused was involved with a syndicate based in Taiwan but had committed offences under

s 44(1)(*a*) of the CDSA in Singapore. As the Prosecution contends, the transnational element of the scheme has complicated detection and enforcement efforts.[53]

51 Fourth, the accused was one of the key masterminds behind the scheme. That said, I accept the Defence's contention that the accused was not the sole mastermind. The Defence also highlights that the accused was roped into the scheme by Latif. I place little weight on this. The fact remains that the accused continued with the criminal activities in 2014, after the interlude following the dispute with Latif. Pertinently, thereafter, the accused continued to play a significant and directing role in the syndicate, by recruiting colleagues and entering into agreements with captains of vessels to perform illegal loadings. Indeed, he continued to participate in the scheme even after leaving Shell in December 2017.

52 Fifth, the offences hurt a strategic industry which is a pillar of Singapore's economy. As explained by the Prosecution, the bunkering and petrochemical industry is a vital component of Singapore's economy. Offending of such a scale would erode our international reputation and status as a global port for maritime trade and industry.[54]

53 Sixth, another 20 similar charges are taken into consideration for sentencing. It is trite that where the TIC charges are of a similar nature, a court may enhance the sentence that would otherwise be meted out: *Public Prosecutor v UI* [2008] 4 SLR 500 at [38]. Indeed, taking into account the TIC charges, the

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53 PSS at para 41.

54 PSS at para 37.

total volume of gas oil misappropriated was 203,403 metric tonnes worth a staggering figure of around S$128m.

54 I note that the Prosecution highlights that the accused betrayed his employer's trust.[55] The crux of the Prosecution's argument is that the accused was in a supervisory role while some of the co-conspirators took directions from the other members of the syndicate. In my view, there is nothing to suggest that the accused was entrusted with any special level of responsibility in his role that enabled his misappropriation: *Kavitha d/o Mailvaganam v Public Prosecutor* [2017] 4 SLR 1349 at [18]. Without more, the accused was no different from any other Shore Loading Officer employed by Shell. The fact that he abused the trust reposed in him is sufficiently reflected in the charges that he faces, which attracts a higher maximum punishment compared to a charge for CBT *simpliciter*. Furthermore, as discussed at [51] above, I have recognised his role in the scheme to be that of a mastermind.

55 In the accused's favour, as accepted by parties, his admission of guilt is a clear mitigating factor. The accused's plea of guilt has saved substantial resources that would have been expended if a trial had proceeded, especially considering the complexity of the offences, the length of time of the offending, and the numerous witnesses and possible experts required. On this basis, the Prosecution suggested a substantial reduction in sentence of approximately 40% from the sentences that would otherwise have been imposed.

56 As a matter of principle, the appropriate discount to be accorded to an offender who pleads guilty is a fact-sensitive matter depending on multiple

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[55] PSS at paras 52 – 53.

factors: *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Ng Kean Meng Terence*") at [71]. However, in cases that are especially grave and heinous, the sentencing considerations of general deterrence, retribution and protection of public would take on great importance, which cannot be significantly displaced because of a plea of guilt: *Ng Kean Meng Terence* at [71]. As the Prosecution contends, the sheer scale of offending requires the sentencing considerations of deterrence and retribution to take centre stage. Thus, it is difficult to reconcile the 40% discount the Prosecution applies with their assessment of the case. Nonetheless, I agree that mitigating weight ought to be placed on the accused's plea of guilt for evincing remorse.

57 I should also touch on four other aspects. First, while the accused is untraced, I accord little weight to this as the offending took place for more than 10 years: *Public Prosecutor v Koh Seah Wee* [2012] 1 SLR 292 at [56]. Second, I am mindful that as the sale proceeds were distributed among the co-conspirators, the accused gained S$5,630,398.68 (approximately 4.41% of the total value of gas oil involved in all the CBT offences). Nonetheless, this is a significant sum, and it remains the case that the harm caused to Shell amounted to S$128m. Third, substantial assets of the accused acquired from the criminal proceeds were seized by the authorities. However, again, this is of little mitigating weight because the accused did not make any voluntary restitution (which would be indicative of the accused's genuine remorse): *Shaik Farid v Public Prosecutor* [2017] 5 SLR 1081 at [58]. My last point is that the personal and familial circumstances of the accused, namely his health problems and the general hardship caused to his family, are unexceptional and do not carry any mitigating weight: *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [11].

Precedent cases

58 Having set out the relevant factors, I turn to the precedent cases involving misappropriation of property of high value. Apart from the cases tendered by the Prosecution, I also had sight of three other precedents that I found to be of assistance. I summarise their salient facts.

59 In *Public Prosecutor v Ismawi bin Ismail* [2019] SGDC 38 (*"Ismawi"*),[56] the offender pleaded guilty to a single charge under s 408 of the PC for misappropriating 129 tonnes of nickel cathode plate worth about S$2,088,000 and six charges under s 6(*b*) of the PCA. The offender was employed as a warehouse supervisor. For the CBT offence, the court accepted the Prosecution's sentencing position of seven years' imprisonment for the charge under s 408 of the PC but reduced the sentence to six years and seven months' imprisonment to account for the five months the offender had spent in remand (at [44]).

60 In arriving at the sentence, the court surveyed certain sentencing precedents which demonstrated that a sentence of five to six years' imprisonment was typically imposed for cases of s 408 of the PC involving sums between S$800k and S$1.7m (at [42]). In particular, the court referred to *Public Prosecutor v Lee Han Boon Adrian* (DAC 911016/2014, unreported), where the offender misappropriated a sum of approximately S$1.4m of company funds while he was employed as a senior manager of finance and human resources of the company. A sentence of six years' imprisonment was imposed. Similarly, in *Public Prosecutor v Tan Wei Shen* (DAC 922900/2016, unreported), a sentence of five years' imprisonment was imposed for the offender who had

[56] The appeal in MA 9024/2019/01 against sentence was dismissed.

misappropriated 46 watches with a total value of approximately S$1.3m over a period of six months.

61 In *Public Prosecutor v Yeo Kay Keng Matthew* [2011] SGDC 425 ("*Yeo Kay Keng*"),[57] the offender pleaded guilty to two charges under s 408 of the PC for misappropriating 3,085 mobile handsets from his employer which he converted to his own use by selling the mobile handsets for over S$2m. The offender also pleaded guilty to seven other charges under s 47(1)(*b*) of the CDSA. While the value of the mobile handsets in each CBT charge is not clearly specified in the grounds of decision, the court imposed a sentence of five years' imprisonment for each charge on the basis of the total value of the misappropriated handphones being over S$2m. A global sentence of six years' imprisonment was ordered, with one charge under s 408 of the PC running consecutively with one charge under s 47(1)(*b*) of the CDSA (where a sentence of one year's imprisonment was imposed) (at [49]).

62 In *Public Prosecutor v Ng Ting Hwa* [2008] SGDC 147, the offender faced 18 charges and pleaded guilty to two charges under s 408 of the PC. Employed as a customer service supervisor, the offender had raised debit and credit notes as well as invoices to one of the company's customers and misappropriated a sum of approximately S$1.9m sale proceeds received from the customers. A sentence of four years' imprisonment was imposed for each of the two charges under s 408 of the PC. I should add at this juncture that the offender had pleaded guilty to charges framed under the 1985 Penal Code, where the offence of CBT as servant was punishable with mandatory imprisonment of up to seven years.

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[57] The offender's appeal against sentence lapsed.

Starting point and range of imprisonment terms

63 In my view, these precedents are significant in showing a flavour of the sentences to be imposed for CBT as servant offences involving large amounts. There is sufficient coherence and consistency among the sentencing precedents to peg an indicative starting point of six years' imprisonment for an offence involving about S$2m under s 408 of the PC. Beyond the sum of S$2m, however, there are insufficient decisions to guide this process. That said, the indicative sentence of six years' imprisonment for a sum of about S$2m provides a useful starting point from which I calibrate the individual sentences. I explain further below.

64 Based on the discussion from [45] to [57] above, I am of the view that, broadly, the aggravating factors outweigh the mitigating weight to be accorded to the plea of guilt. To account for this, on balance, I apply an uplift of a year to the starting point of six years' imprisonment for sums around S$2m. The lowest value in the proceeded charges is S$2.79m, and the highest value in the proceeded charges is S$8.83m. To accommodate these sums, I find that the appropriate range of sentences to be imposed should fall between seven to 10 years of imprisonment. The increments to the sentences reflect the general principle I set out above that the higher the quantum, the heftier the sentence (see [45] above).

65 While I am mindful of the caution sounded in *Tan Cheng Yew* at [184] not to treat this as a mechanical mathematical exercise (see [46] above), in the present case, it is important to give accord to the *differences* in the value of gas oil misappropriated in the charges. At this juncture, I digress to observe that each of the CBT charges covers a period of a month and reflects the level of

criminal activity by way of the number of illegal loadings and volume of gas oil misappropriated. This is set out at Annex A. While the sentences do not have to progress in a linear manner based on the value of property misappropriated, there should be a recognition of the level of criminal activity by adjusting the sentences based on the value of gas oil misappropriated.

66 I should add that the observation in *Tan Cheng Yew* was made in the context of refuting the suggestion that the sentences imposed therein were manifestly inadequate as there were sentencing precedents with proportionately higher sentences imposed for smaller sums. Read in its proper context, *Tan Cheng Yew* is a reminder that differences in sums alone cannot be the sole factor in the court's determination of the appropriate sentence. In the present case, having considered factors beyond the quantum misappropriated, I impose a range of sentences to reflect the varying levels of the culpability of the accused albeit within the *same* scheme of offending, involving the same *modus operandi* and criminal structure, borne out by the different frequencies of illegal loadings over the months.

67 Indeed, from what I have set out of the parties' sentencing submissions above, they have based their proposed individual sentences primarily on the value of the gas oil misappropriated.[58] Otherwise, it appears that the parties consider the remaining aggravating or mitigating factors to apply uniformly across the charges. Neither the Prosecution nor the Defence suggests that certain charges were more or less aggravated than others for any other reason.

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[58] PSS at para 58; see also PIM at paras 16 and 18.

68 Therefore, taking the aggravating and mitigating factors to apply uniformly, the primary differentiating factor between the individual sentences is the value of gas oil involved in each charge.

Sentences

69 Accordingly, I impose the following sentences:

Charge number	Date	Value involved	Sentence of imprisonment
2	December 2017	US$4,953,033.17 S$6,656,840.81	9 years
3	November 2017	US$6,517,196.40 S$8,833,894.05	10 years
4	October 2017	US$4,253,608.15 S$5,766,851.75	8 years 6 months
5	September 2017	US$3,903,368.91 S$5,286,958.13	8 years 6 months
6	August 2017	US$4,324,915.44 S$5,893,619.70	8 years 6 months
7	July 2017	US$3,282,409.51 S$4,506,342.96	8 years
8	June 2017	US$4,310,757.36 S$5,958,116.56	8 years 6 months
9	May 2017	US$2,880,729.88 S$4,007,369.01	8 years
10	April 2017	US$4,600,035.36 S$6,408,242.94	9 years
11	March 2017	US$3,521,471 S$4,922,997.80	8 years
12	February 2017	US$3,513,309.66 S$4,953,855.87	8 years
15	November 2016	US$2,284,346 S$3,237,393.17	7 years 6 months
16	October 2016	US$2,105,346.25 S$2,894,268.67	7 years
17	September 2016	US$2,114,595.86 S$2,858,164.81	7 years

Charge number	Date	Value involved	Sentence of imprisonment
19	July 2016	US$2,608,291.98 S$3,507,561.20	7 years 6 months
20	June 2016	US$3,305,700.86 S$4,444,936.51	8 years
22	April 2016	US$2,774,806.21 S$3,732,977.14	7 years 6 months
35	February 2015	US$3,048,224.74 S$4,121,631.57	8 years
39	September 2014	US$2,428,091 S$3,052,359	7 years 6 months
40	August 2014	US$2,245,773.64 S$2,791,411.86	7 years

70 In my view, these sentences are also largely congruent with those imposed in *Ashraf* and *Sadagopan Premnath*. In *Ashraf*, the court imposed sentences between 48 months' imprisonment and 72 months' imprisonment for the nine CBT offences involving sums approximately between S$1.8m and S$4.1m. Another nine CBT offences were taken into consideration for sentencing. In *Sadagopan Premnath*, sentences between 40 months' imprisonment and 54 months' imprisonment were imposed for the four CBT offences involving sums approximately between S$5.1m and S$7.8m. A further five CBT offences were taken into consideration for sentencing.

71 In comparison to *Ashraf* and *Sadagopan Premnath*, I have imposed higher sentences for charges involving similar amounts. This accounts for the accused's greater culpability in the criminal scheme. The accused played a directing and presiding role in the conspiracy to commit the offence. The same cannot be said of Ashraf or Sadagopan. Ashraf primarily took directions from the other co-conspirators and was neither at the bottom nor the top of the conspiracy's hierarchy: *Ashraf* at [67]. Sadagopan, on the other hand, played a

comparatively limited role in the syndicate compared to most of the co-conspirators: *Sadagopan Premnath* at [48]. Moreover, the accused was involved in the scheme for over a decade. Sadagopan was only part of the scheme for less than a year: *Sadagopan Premnath* at [3]. Ashraf was involved for approximately two years: *Ashraf* at [3]. Lastly, the total value of gas oil the accused was involved in misappropriating is also vastly greater than the value of gas oil Sadagopan or Ashraf was involved in misappropriating.

The CDSA charges

72 I turn next to the CDSA charges. The prescribed punishment under s 47(1)(*c*) punishable under s 47(6)(*a*) of the CDSA is a fine not exceeding $500,000 or imprisonment for a term which may extend to 10 years or both.

73 As set out above, both the Prosecution and the Defence rely on *Ho Man Yuk.* In that case, one of the offenders was sentenced to 10 months of imprisonment for CDSA offences involving $100,000, as well as 12 and 13 months of imprisonment for amounts of $300,000 and $500,000 respectively. In reaching this position, the court set out sentencing ranges for other amounts starting from amounts less than S$5,000 (at [141]). In *Chong Kum Heng*, the High Court at [71] relied on *Ho Man Yuk* as a starting point and adopted the ranges for amounts below S$40,000. I broadly agree with the approach, and for present purposes, I make reference to the following two sentencing ranges set out in *Ho Man Yuk* at [141]:

(a) 10 to 11 months' imprisonment for amounts of S$100,000 to S$300,000, and

(b) 12 to 13 months' imprisonment for amounts from S$300,000 to S$500,000.

74 While the Prosecution relies on *Ho Man Yuk*, the Prosecution contends that there should be higher sentences in the present case. First, the primary offences in *Ho Man Yuk* involved opportunistic exploitation of glitches in the casino. Second, the CDSA offences in *Ho Man Yuk* were committed over a short period of time. In the present case, the predicate offences were far more serious and the offending under the CDSA occurred over a sustained period.

75 Turning to the Defence, the Defence further argues that a 40% discount, akin to that proposed by the Prosecution for the CBT offences, ought to be applied to the sentencing ranges in *Ho Man Yuk*. As observed at [56], the extent of a sentencing discount for a guilty plea is a fact-sensitive exercise dependent on numerous factors. Indeed, I am unable to find any basis for the deep discount of 40% proposed by the Prosecution even for the CBT charges.

76 In my view, the present case is more egregious than *Ho Man Yuk*. This is so for two reasons. First, the value of the CDSA charges in the present case is significantly greater than that in *Ho Man Yuk*. In the present case, the value of the proceeded charges is S$2,684,908.43. When the amounts in the TIC charges are included, the total amount stands at S$3,417,201.32. In *Ho Man Yuk*, of the three offenders, the highest total value involved was S$1,355.135.23 (at [147]). Second, the period of offending in the present case was far more prolonged than that in *Ho Man Yuk*. The offences occurred over a week in *Ho Man Yuk* (at [2] – [4]). Accordingly, an uplift from the ranges set out in *Ho Man Yuk* is warranted. In doing so, I am mindful that the offenders in *Ho Man Yuk* claimed trial while the accused has pleaded guilty.

77 Keeping in mind the relevant aggravating and mitigating factors, I impose the following sentences:

Charge no.	Date	Value involved	Sentence
41	12 April 2013 to 2 January 2018	S$432,678	17 months
42	17 August 2017 to 2 January 2018	S$199,114.14	12 months
43	20 June 2017 to 27 December 2017	S$123,588	11 months
44	13 February 2017 to 10 November 2017	S$252,000	14 months
45	Between April and October 2017	S$173,637.95	12 months
46	September 2017	S$100,000	11 months
47	Between November 2015 and 2017	S$480,000	18 months
48	29 July 2014 to 3 May 2017	S$140,426.79	11 months
49	4 January 2012 to 1 May 2016	S$552,185	20 months
50	1 October 2013 to 11 March 2016	S$231,278.55	13 months

The PCA charges

78 I move on to the PCA charges. The prescribed punishment for an offence under s 6(*b*) of the PCA is a fine not exceeding $100,000 or imprisonment for a term which may extend up to five years or both.

79 Parties accept that the accused's actions fall within Category 2 of *Romel*. The accused had given gratification to the various surveyors for the surveyors to forbear from doing what they were supposed to do, *ie*, to accurately report

the cargo on board vessels. These offences typically attract custodial offences: *Romel* at [28].

80 In arriving at their proposed sentencing positions, the parties primarily rely on *Romel* and *Lim Teck Chye*. The Prosecution argues that there should be an uplift from the six months' imprisonment term imposed in *Romel* on the basis that the accused had initiated the scheme, that the amount of gratification was higher, and the number of surveyors bribed was greater. As for *Lim Teck Chye*, the Prosecution contends that there should be a substantial uplift from the sentence of two months' imprisonment and S$40,000 fine per charge (for sums ranging from S$500 and up). The Defence has not sought to distinguish the precedents from the present case.

81 In *Romel*, the offender faced three charges under s 6(*a*) of the PCA for soliciting bribes to issue favourable inspection reports in respect of vessels. Two charges were proceeded with, and one charge was taken into account for the purpose of sentencing. The offender's sentences were six months' imprisonment per charge with the sentences to run concurrently. The offending acts were carried out over a period of three months, involving a total sum of US$7,200. Similar to the present case, the offences were premeditated and deliberate, and involved a strategic industry (at [51]). However, in *Romel*, the offender's act compromised the safety of the oil terminal as well as the workers at the terminal (as vessels with defects classified as "high risk" were allowed into the oil terminal). Even then, I find the present case to be more aggravated than *Romel*. There was an extensive web of corruption in the present case, where the accused was in cahoots with Muzaffar and had bribed 13 surveyors in total (including those in the TIC charges). The offending acts were committed over a period far longer than that in *Romel.* The amount of gratification was also far

greater (being US$145,000 and S$10.000 for the PCA charges, and US$188,000 and S$20,000 when the amounts in the TIC charges are included).

82 Turning to *Lim Teck Chye*, the offender faced six charges, for paying gratification sums ranging from S$500 to S$1,600 to three marine surveyors to falsely certify that his company had supplied the correct quantity and quality of marine oil to their clients' vessels. The offending acts took place over a year. The offender was sentenced to two months' imprisonment and S$40,000 fine for each charge, with three of the imprisonment terms to run consecutively. Therefore, the global sentence was six months' imprisonment and a total fine of S$240,000. The court observed that that the actions of the offender had the potential to adversely affect public confidence in the independence of marine surveyors and Singapore's bunkering industry (at [68]). On the facts, I, again, find the present case to be more egregious than *Lim Teck Chye*. The accused's offending involves a far greater number of surveyors. The accused faces a significantly greater number of charges (considering both the proceeded and TIC charges) than the offender in *Lim Teck Chye*.

83 Apart from *Romel* and *Lim Teck Chye*, I find the following precedents to be of some assistance. The facts are not on all fours with the present case but provide some useful guidance, especially given the amounts of gratification involved.

84 In *Public Prosecutor v Lu Sang* [2017] SGDC 199,[59] the offender was convicted after trial for 24 charges under s 6(*a*) of the PCA involving sums between S$1,300 and S$23,252. A total sum of S$246,666.70 was received. The

[59] The appeal against the decision in MA 9170/2017/01 was dismissed by the High Court on 3 November 2017.

offender was an assistant sales manager of a company who had initiated kickback arrangements with suppliers for over five years. A range of sentences between two to eight months' imprisonment was imposed. Pertinently, for sums between S$10,022 and S$10,425.10, a sentence of five months' imprisonment was imposed. In arriving at the sentences, the court noted that the bribes amounted to a staggering sum (at [139]), that there was a systematic and consistent pattern of the accused obtaining bribes (at [140]), that the offences were committed over more than four years (at [140]), and that the accused had initiated the kickback arrangement (at [141]). A global sentence of 20 months' imprisonment was imposed.

85 In *Public Prosecutor v Toh Hong Huat* [2016] SGDC 198,[60] the offender was convicted after trial for 29 charges under s 6(*a*) of the PCA involving sums between S$918 and S$9,000. A total sum of S$62,701 was received by the accused. A range of sentences between one to five months' imprisonment was imposed. In particular, a sentence of five months' imprisonment was imposed for sums involving S$9,000. The court observed that the offender faced multiple offences and that they were committed over a relatively lengthy period (at [88]).

86 On a holistic assessment of the cases, I find the accused's culpability and the resulting consequences of his offences to be greater than the precedents. In particular, I note the close nexus between the accused's PCA offences and the CBT offences, with the PCA offences being committed to cover up his

[60] The appeal against the decision in MA 9075/2016/01 was dismissed by the High Court on 6 January 2017.

commission of the CBT offences. Accordingly, I impose the following sentences:

Charge number	Date	Value involved	Sentence
73	Between 2014 and 2015	US$15,000	10 months
75	Between 2014 and 2015	US$15,000	10 months
76	2014	S$10,000	8 months
78	Between 2014 and 2015	US$15,000	10 months
80	Between 2016 and 2017	US$90,000	24 months
85	Between 2015 and 2017	US$10,000	9 months

The global sentence

87 The Prosecution submits that the proposed global sentence of 359 months' imprisonment (comprising the sentences of three CBT charges, two CDSA charges and one PCA charge) does not offend the totality principle for the primary reason that this reflects the totality of the accused's criminal conduct. During oral submissions, the Prosecution explained that the three proposed CBT sentences reflect a period where the accused's criminality was at its peak, in terms of the amount of oil misappropriated and the number of conspirators involved. For the CDSA offences, the sentences for the two most serious charges were chosen. Finally, for the PCA offences, the most serious charge was chosen to reflect the accused's overall criminality. In contrast, the Defence seeks a global sentence of 180 months' imprisonment (based on the proposed sentences for three CBT charges) and argues that the sentences for the PCA and CDSA charges ought to run concurrently because the moneys involved arose from the CBT charges.

88 As a starting point, I agree with the Prosecution that the sentences for the offences under the CDSA and PCA ought to run consecutively with the sentences for the CBT charges. While the moneys involved in the CDSA and PCA offences flow from the CBT charges, the CDSA and PCA offences relate to distinct protected legal interests. In particular, for the CDSA offences, the legal interest consists of the public interest in making it as challenging as possible for criminals to dispose of their criminal proceeds: *Zhou Haiming v Public Prosecutor and other appeals* [2017] 4 SLR 247 at [45]. Consequently, the sentences for the CDSA and PCA offences should not run concurrently with the sentences for the CBT charges.

89 In arriving at the appropriate aggregate sentence, I consider the precedents of *Public Prosecutor v Teo Cheng Kiat* [2000] SGHC 129 ("*Teo Cheng Kiat*") and *Public Prosecutor v Ewe Pang Kooi* [2020] 3 SLR 851 ("*Ewe Pang Kooi*") to be instructive. In *Teo Cheng Kiat*, a global sentence of 24 years' imprisonment was imposed. The offender pleaded guilty to six charges under s 408 of the 1985 Penal Code for misappropriating a total of S$35m. A sentence of six years' imprisonment was imposed for each charge, with four of the sentences ordered to run consecutively. In *Ewe Pang Kooi*, after trial, the offender was convicted of 50 charges under s 409 of the PC for misappropriating S$41m. The prescribed punishment is life imprisonment or 20 years' imprisonment. A global sentence of 310 months' imprisonment (approximately 25.8 years' imprisonment) was imposed by ordering three sentences to run consecutively.

90 In my view, the overall criminality of the present case is greater than the precedents, even when keeping in mind that the offender in *Ewe Pang Kooi* had claimed trial. Looking alone at the value involved in the CBT offences, it is

significantly greater than the quantum involved in either of the cases. Beyond the value involved, the number and type of charges in the present case also far surpass those in the cases. Pertinently, the accused was at the centre of a giant web of criminality of a massive scale. The giant web encompassed those who were co-conspirators to the scheme, those who purchased the misappropriated gas oil and those who assisted in concealing the misdeeds. An appropriate global sentence would necessarily be one that is greater than those imposed in the precedents.

91 Further, I am mindful of the global sentences imposed on Ashraf and Sadagopan, the two co-conspirators sentenced in the State Courts. For Sadagopan, a global sentence of 80 months' imprisonment was imposed, with the sentences of two CBT charges ordered to run consecutively. As for Ashraf, the sentences of two CBT charges were similarly ordered to run consecutively, giving rise to a global sentence of 114 months' imprisonment. Again, it is clear that the criminality of the accused far surpasses that of Sadagopan and Ashraf for reasons similar to those highlighted at [90]. Not only does the accused face more charges compared to Sadagopan and Ashraf, the accused also played a materially more significant role than the duo in the scheme. Based on the principles of consistency and parity, a far higher global sentence ought to be imposed.

92 Based on the above, I am of the view that an aggregate imprisonment term of 29 years is just and appropriate. I order the following sentences to run consecutively:

Charge number	Offence	Date	Value	Sentence of imprisonment
2	CBT	December 2017	US$4,953,033.17 S$6,656,840.81	9 years

Charge number	Offence	Date	Value	Sentence of imprisonment
9	CBT	May 2017	US$2,880,729.88 S$4,007,369.01	8 years
35	CBT	February 2015	US$3,048,224.74 S$4,121.631.57	8 years
42	CDSA	17 August 2017 to 2 January 2018	S$199,114.14	12 months
45	CDSA	Between April and October 2017	S$173,637.95	12 months
80	PCA	Between 2016 and 2017	US$90,000	24 months
Global Sentence:				**29 years' imprisonment**

93 In my view, the three sentences for the CBT charges adequately reflect the accused's persistence in offending across the years. The sentence for the PCA charge (charge 80), which involves the highest sum, is demonstrative of the severity of the PCA offences considering that the accused had given bribes to at least 13 surveyors. As for the two sentences for the CDSA charges (charges 42 and 45), the two charges reflect the breadth of the accused's offending in the CDSA charges, not only in the value of moneys involved but in his disposal of proceeds through assets that are difficult to trace. In this instance, charge 42 involves the use of the criminal proceeds in a forex trading account while charge 45 concerns renovations to a restaurant in Malaysia which the accused invested in.

94 I now turn to apply the totality principle to the global sentence. This is to ensure that the aggregate sentence is sufficient and proportionate to the

offender's overall criminality: *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [98(c)]. In this regard, I note that while the accused is untraced, he can hardly be described as a first-time offender given the numerous offences committed across the years. Although the global sentence is almost twice in length of the prescribed maximum punishment for the most serious of the offences (being the CBT as servant offence), it is wholly proportionate to the overall criminality of the accused. I therefore do not see the need to make adjustments to these individual sentences. The remaining sentences are to run concurrently.

Hoo Sheau Peng
Judge of the High Court

Christopher Ong, Stephanie Chew, Ryan Lim and Gerald Tan (Attorney-General's Chambers) for the Prosecution;
Noor Mohamed Marican and Mohd Munir Marican (Marican & Associates) for the accused.

Annex A: Details of CBT charges

Charge number	Period of offence	Volume of gas oil (metric tonnes)	Value of gas oil (US$/S$)	Vessels and number of incidents	Co-conspirators
2	December 2017	8861	US$4,953,033.17 S$6,656,840.81	*Gaea (2)* *Prime Sands (1)* *Prime Sky (1)* *Sentek 22 (3)*	Muzaffar Ali Khan bin Muhamad Akram Tiah Kok Hwee Cai Zhizhong Koh Choon Wei Sadagopan Premnath Quek Rong Hong
3	November 2017	12116	US$6,517,196.40 S$8,833,894.05	*Griffin (1)* *Prime Sands (2)* *Prime Sky (2)* *Sentek 22 (4)* *Sentek 26 (2)*	Muzaffar Ali Khan bin Muhamad Akram Tiah Kok Hwee Cai Zhizhong Koh Choon Wei Sadagopan Premnath.
4	October 2017	8459	US$4,253,608.15 S$5,766,851.75	*Aulac Fortune (1)* *Prime Sands (2)* *Prime South (2)* *Sentek 22 (2)* *Sentek 26 (2)*	

Charge number	Period of offence	Volume of gas oil (metric tonnes)	Value of gas oil (US$/S$)	Vessels and number of incidents	Co-conspirators
5	September 2017	7791	US$3,903,368.91 S$5,286,958.13	*Aulac Vision (1)* *Hai Linh 03 (1)* *Prime Sands (1)* *Prime Sky (1)* *Prime South (1)* *Sentek 22 (1)* *Sentek 26 (1)*	
6	August 2017	9354	US$4,324,915.44 S$5,893,619.70	*Prime Sands (1)* *Prime Sky (2)* *Prime South (1)* *Sentek 22 (3)* *Sentek 26 (4)*	
7	July 2017	7297	US$3,282,409.51 S$4,506,342.96	*Petrolimex 11 (1)* *Prime Sands (2)* *Prime South (2)* *Sentek 22 (1)* *Sentek 26 (1)*	
8	June 2017	10122	US$4,310,757.36 S$5,958,116.56	*Petrolimex 10 (1)* *Prime Sands (2)* *Prime Sky (1)* *Sentek 22 (3)* *Sentek 26 (3)*	

Charge number	Period of offence	Volume of gas oil (metric tonnes)	Value of gas oil (US$/S$)	Vessels and number of incidents	Co-conspirators
9	May 2017	6356	US$2,880,729.88 S$4,007,369.01	*Prime Sands (1)* *Prime South (1)* *Sentek 22 (3)* *Sentek 26 (3)*	
10	April 2017	9593	US$4,600,035.36 S$6,408,242.94	*Aulac Angel (1)* *Petrolimex 08 (1)* *Prime Sky (1)* *Prime South (1)* *Prime Synergy (1)* *Sentek 22 (2)* *Sentek 26 (2)*	Muzaffar Ali Khan bin Muhamad Akram Tiah Kok Hwee, Cai Zhizhong Koh Choon Wei
11	March 2017	7550	US$3,521,471 S$4,922,997.80	*Petrolimex 11 (1)* *Prime Sky (2)* *Prime Sun (1)* *Prime Synergy (1)* *Sentek 22 (1)* *Sentek 26 (2)*	
12	February 2017	7086	US$3,513,309.66 S$4,953,855.87	*Petrolimex 08 (1)* *Petrolimex 09 (1)* *Prime South (2)* *Sentek 22 (3)*	
15	November 2016	5426	US$2,284,346 S$3,237,393.17	*Khatim (1)* *Petrolimex 08 (1)* *Petrolimex 11 (1)*	Muzaffar Ali Khan bin Muhamad Akram

Charge number	Period of offence	Volume of gas oil (metric tonnes)	Value of gas oil (US$/S$)	Vessels and number of incidents	Co-conspirators
				Petrolimex 18 (1) *Sentek 26 (1)*	Tiah Kok Hwee Cai Zhizhong Koh Choon Wei Muhamad Farhan bin Mohamed Rashid
16	October 2016	4645	US$2,105,346.25 S$2,894,268.67	*Great Ocean (1)* *Prime Sky (1)* *Sentek 22 (1)* *Sentek 26 (1)*	
17	September 2016	5237	US$2,114,595.86 S$2,858,164.81	*Aulac Vision (1)* *Khatim (1)*	
19	July 2016	6482	US$2,608,291.98 S$3,507,561.20	*Alli (1)* *Khatim (1)* *LongHung 2 (1)* *Prime Sun (2)*	
20	June 2016	7639	US$3,305,700.86 S$4,444,936.51	*Great Ocean (1)* *Khatim (3)* *Petrolimex 11 (2)* *Sentek 22 (2)*	
22	April 2016	7799	US$2,774,806.21 S$3,732,977.14	*Aulac Angel (1)* *Aulac Vision (1)* *Khatim (3)* *Petrolimex 12 (1)* *Prime Sailor (1)* *Prime Sun (1)* *Sentek 26 (1)*	

Charge number	Period of offence	Volume of gas oil (metric tonnes)	Value of gas oil (US$/S$)	Vessels and number of incidents	Co-conspirators
35	February 2015	5818	US$3,048,224.74 S$4,121,631.57	*Glory Ocean (1)* *Great Ocean (1)* *Petrolimex 09 (1)* *Petrolimex 10 (2)* *Vinalines Glory (2)*	Muzaffar Ali Khan bin Muhamad Akram Tiah Kok Hwee Cai Zhizhong Koh Choon Wei Muhammad Ashraf Muhamad Farhan bin Mohamed Rashid.
39	September 2014	2930	US$2,428,091 S$3,052,359	*Aulac Jupiter (2)* *Great Ocean (1)* *Petrolimex 06 (2)*	
40	August 2014	2596	US$2,245,773.64 S$2,791,411.86	*Dai Minh (1)* *Petrolimex 16 (1)* *Sentek 22 (1)*	

Annex B: Details of CDSA charges

Charge number	Period of offence	Description
41	12 April 2013 to 2 January 2018	Convert property, namely, cash amounting to the sum of S$432,678, into the down payment and monthly repayments of a condominium unit at Regentville located at 6 Hougang Street 92 #05-04, Singapore, which charge is amalgamated pursuant to s 124(4) CPC
42	17 August 2017 to 2 January 2018	Convert property, namely, cash amounting to the sum of S$199,114.14, into US dollars amounting to 142,770.
43	20 June 2017 to 27 December 2017	Convert property, namely, cash amounting to the sum of S$123,588, into a Mercedes Benz GLC250 bearing registration SLV5807Z
44	13 February 2017 to 10 November 2017	Transfer property, namely a sum of S$252,000, by depositing the said sum into two OCBC corporate accounts 588132258001 and 588132266001
45	Between April 2017 and October 2017	Transfer property, namely, cash amounting to the sum of S$173,637.95, by handing over the said sum to one Lim Choon Keong
46	September 2017	Transfer property, namely, cash amounting to the sum of S$100,000, by handing over the said sum to one Tan Siew Choon
47	Between November 2015 and 2017	Transfer property, namely, cash amounting to the sum of S$480,000, by handing over the said sum to one Sriwasuth Chayanuch, which charge is amalgamated pursuant to s 124(4) CPC
48	29 July 2014 to 3 May 2017	Convert property, namely, cash amounting to the sum of S$140,426.79, into a Toyota Harrier
49	4 January 2012 to 1 May 2016	Convert property, namely, cash amounting to the sum of S$552,185, into casino chips over 175 occasions, which charge is amalgamated pursuant to s 124(4) CPC
50	1 October 2013 to 11 March 2016	Remove from jurisdiction, property, namely a sum of S$231,278.55, by remitting the said

Charge number	Period of offence	Description
		property to Bangkok, Thailand via three Telegraphic Transfers from your UOB account no. 3551283087, for the purchase of a condominium unit at IDEO Q – Ratchathewi Unit No. 27-01 Bangkok, Thailand, which charge is amalgamated pursuant to s 124(4) CPC

Annex C: Details of the PCA charges

Charge number	Period of offence	Recipient	Amount of gratification
73	Between 2014 and 2015	A Duraisamy	US$15,000
75	Between 2014 and 2015	Jasbir Singh s/o Paramjit Singh	US$15,000
76	2014	Anand s/o Omprekas	S$10,000
78	Between 2014 and 2015	Noruliman bin Bakti	US$15,000
80	Between 2016 and 2017	Muhammad Ali bin Muhammad Nor	US$90,000
85	Between 2015 and 2017	Rizal bin Zulkeflee	US$10,000