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

[2025] SGHC 24

Magistrate's Appeal No 9077 of 2023

Between

Public Prosecutor

… *Appellant*

And

Sim Chon Ang Jason

… *Respondent*

Magistrate's Appeal No 9078 of 2023

Between

Public Prosecutor

… *Appellant*

And

Tjioe Chi Minh

… *Respondent*

Magistrate's Appeal No 9143 of 2023/01

Between

Sim Chon Ang Jason

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9143 of 2023/02

Between

Public Prosecutor

… *Appellant*

And

Sim Chon Ang Jason

… *Respondent*

JUDGMENT

[Criminal Law — Appeal]
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19 February 2025 Judgment reserved.

Vincent Hoong J:

Introduction

1 In *Public Prosecutor v Sim Chon Ang Jason and other appeals* [2024] SGHC 169 (the "*Conviction Judgment*") (at [99]−[100]), I allowed the Prosecution's appeals against the acquittal of Sim Chon Ang Jason ("Sim") and Tjioe Chi Minh ("Tjioe") and gave directions for the filing of written submissions by the parties on the appropriate sentences for the both of them. I do not propose to recite the material facts as they have already been set out in the *Conviction Judgment*, and the abbreviations used therein will also be used in this Judgment.

Issues for consideration

2 There remain five issues for my consideration:

(a) First, should a sentencing framework be adopted for offences under s 76 of the Companies Act (Cap 50, 2006 Rev Ed)?

(b) Second, if a sentencing framework should be adopted, what form should that sentencing framework take?

(c) Third, applying the appropriate sentencing framework adopted by the court, what is the appropriate sentence for Sim?

(d) Fourth, what is an appropriate global sentence for Sim?

(e) Fifth, what is the appropriate sentence for Tjioe?

Whether a sentencing framework should be adopted

3 The Prosecution submits that it is not appropriate in the present circumstances to promulgate a sentencing framework for offences under s 76 of the Companies Act for two distinct reasons.[1]

4 Firstly, the Prosecution asserts that sentencing frameworks should generally be developed only when a sufficient body of case law has been developed. The Prosecution reasons that without a body of case law, there may not be a discernible sentencing pattern, and developing a framework in such circumstances could lead to arbitrary indicative sentencing ranges that lack proper justification.[2] In support of this proposition, the Prosecution points to the fact that there are currently no reported cases where an offender was sentenced for an offence under s 76 of the Companies Act. The Prosecution also cites four cases where this court has declined to develop a sentencing framework due to a paucity of precedents, including *Agustinus*

[1] Prosecution's Further Submissions on Sentence dated 8 January 2025 at [4]

[2] Prosecution's Further Submissions on Sentence dated 8 January 2025 at [6]

Hadi v Public Prosecutor [2024] SGHC 262 ("*Agustinus Hadi*"), where I declined to do so in respect of offences punishable under s 64(2C)(*a*) of the Road Traffic Act (Cap 276, 2004 Rev Ed) (the "RTA").[3]

5 Secondly, the Prosecution asserts that it is not appropriate to develop a sentencing framework where there are factually diverse ways, involving varying degrees of harm and/or culpability, in which a particular offence could be committed. The Prosecution argues that illegal financial assistance under s 76 of the Companies Act is one such offence, and therefore, a single sentencing framework would not adequately cater to the full range of situations in which such financial assistance could be committed.[4]

6 On the other hand, counsel for Sim, Mr Navindraram Naidu ("Mr Naidu"), does not object to the promulgation of a sentencing framework in the present circumstances. Instead, Mr Naidu has proposed a sentencing framework of his own,[5] which shall be discussed below in greater detail.

7 In my judgment, a sentencing framework should be adopted for offences under s 76 of the Companies Act, due to a need for guidance on how offenders convicted under s 76 should be sentenced.

8 The Prosecution is correct to point out that there are no reported sentencing decisions under this provision. However, as I observed in *Sue Chang v Public Prosecutor* [2023] 3 SLR 440 at [48], the lack of a large corpus of case law to draw from does not form an absolute bar to the promulgation of a sentencing framework for a particular offence. Indeed, the

[3] Prosecution's Further Submissions on Sentence dated 8 January 2025 at [5]

[4] Prosecution's Further Submissions on Sentence dated 8 January 2025 at [7]–[8]

[5] Defence's Reply Written Submissions for Sim dated 8 January 2025 at [6]

lack of reasoned decisions has, in some cases, been cited as one of the reasons to adopt a sentencing framework. For instance, in *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 at [32], See Kee Oon J (as he then was) observed that it would be useful for the High Court to set out a sentencing framework for cash laundering offences under s 44(1)(*a*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) in order to provide guidance on sentencing.

9 The present circumstances also differ materially from those in *Agustinus Hadi*. As I observed in *Agustinus Hadi* at [5], the relevant offence-specific and offender-specific factors for offences punishable under s 64(2C)(*a*) of the RTA can be uncontroversially distilled, with suitable modifications, from existing guideline judgments issued by this court concerning offences under s 64(1) of the RTA generally (see, *eg*, *Kwan Weiguang v Public Prosecutor* [2022] 5 SLR 766, *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587, *Public Prosecutor v Aw Tai Hock* [2017] 5 SLR 1141 and *Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099).

10 In contrast, there is a complete absence of judicial guidance as to how an offender should be sentenced for an offence under s 76 of the Companies Act. In my view, the disparate gulf between parties' submissions in the instant case accentuates this lack of guidance. Before me, parties disagree on not only the dominant sentencing consideration for this offence, but also on *the very nature* of the offence itself (*ie*, whether it is a regulatory or criminal offence). In practical terms, this resulted in vastly divergent sentencing submissions: Mr Naidu submits for a non-custodial sentence,[6] while the

[6] Reply Written Submissions (Sentencing) dated 8 January 2025 at [86]

Prosecution submits that a term of 12 to 18 months' imprisonment is condign.[7]

11 I turn to address the Prosecution's second argument, namely, that the factually diverse ways, involving varying degrees of harm and/or culpability, in which offences under s 76 of the Companies Act may be committed, renders it unsuitable for a single sentencing framework.

12 In my view, the mere fact that an offence may be committed in various ways does not serve as an absolute bar against the adoption of a single sentencing framework. Rather, in the present circumstances, I find that a single sentencing framework is appropriate *precisely* due to the myriad methods through which this offence may be committed.

13 In support of its submission on this point, the Prosecution makes a number of observations relating to offences under s 76 of the Companies Act. The Prosecution notes that the offence provision itself is worded broadly and criminalises both the direct and indirect giving of financial assistance (the Prosecution also submits that the latter should be penalised differently if it results in increased difficulty of detection).[8] The Prosecution also notes that the harm caused by such offences can be varied, ranging from the voiding of contracts or transactions under s 76A of the Companies Act, to actual depletion of the company's assets or manipulation of the securities market.[9]

14 To illustrate its point, the Prosecution provides eight distinct examples of how illegal financial assistance could be provided:

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[7] Prosecution's Further Submissions on Sentence dated 8 January 2025 at [62]

[8] Prosecution's Further Submissions on Sentence dated 8 January 2025 at [8]

[9] Prosecution's Further Submissions on Sentence dated 8 January 2025 at [8]

(a) lending money to someone who uses the money to finance his acquisition of the company's shares;

(b) giving guarantees or security for a loan made to a person in order to enable them to acquire the company's shares;

(c) the payment of the purchase price is secured by a charge over the company's assets;

(d) the release of a debt or obligation to reduce the price payable for the shares;

(e) taking over a financial obligation of the purchaser;

(f) acquiring an asset from someone to put the latter in funds to acquire the company's shares;

(g) using the company's assets to finance the creation of consideration for the transfer of shares in the company; and

(h) assistance provided to the vendor of the shares.

15 I agree with the above observations made by the Prosecution. In particular, I acknowledge the manifold pathways to harm that the Prosecution set out above at [14] and note that this necessarily means that offences under s 76 cause qualitatively and quantitatively distinct forms of harm to distinct stakeholders (*ie*, creditors, shareholders, and third parties such as the stock market and the stock exchange itself) in each and every instance of their commission.

16 In my view, the sheer diversity of factual matrices which may be captured under s 76 makes it such that the formulation of limited frameworks

(*ie*, frameworks which cover only some type of misconduct and/or factual scenario within the broader ambit of conduct prohibited by a provision) is an untenable approach in the present circumstances. Indeed, such an approach could conceivably result in multiple overlapping frameworks and amount to unnecessary duplication. In any event, even if this approach was taken, one would still have to grapple with the issue of harm and how distinct forms of harm caused to different stakeholders should be adequately accounted for.

17 Therefore, in my view, a single sentencing framework capable of assessing the overall culpability of an offender and the harm inflicted upon all stakeholders *in totality* is appropriate.

The appropriate sentencing framework for financial assistance

The Young Independent Counsel's proposed sentencing framework

18 On the issue of the appropriate sentencing framework and in light of the relative paucity of reported sentencing precedents for illegal financial assistance, Mr Darren Low ("Mr Low") was appointed as a Young Independent Counsel to assist the court on the issue of what an appropriate sentencing framework for offences under s 76 of the Companies Act should be.

19 Mr Low submits that deterrence is the predominant sentencing consideration for this offence.[10] To this end, Mr Low proposes the adoption of the two-stage five-step approach in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev*").[11] The first stage of the

[10] YIC's Submissions dated 11 December 2024 at [16]

[11] YIC's Submissions dated 11 December 2024 at [37]

framework is focused on a general holistic assessment of the seriousness of the offence by reference to all offence-specific factors. This involves three steps:

(a) Step 1: Identify the level of harm caused by the offence and the level of the offender's culpability.

(b) Step 2: Identify the applicable indicative sentencing range in a three-by-three matrix by reference to the level of harm caused by the offence (in categories of slight, moderate and severe) and the level of the offender's culpability (in categories of low, medium and high).

(c) Step 3: Identify the appropriate starting point within the indicative sentencing range having regard to the level of harm caused by the offence and the level of the offender's culpability.

20 The second stage of the framework focuses on adjustments to the indicative starting point sentence identified at the first stage. This stage involves two steps:

(a) Step 4: Adjust the starting point sentence having regard to offender-specific aggravating and mitigating factors.

(b) Step 5: Where an offender has been convicted of multiple charges, make further adjustments, if necessary, to the sentence for the individual charges in light of the totality principle.

21 As regards the relevant sentencing factors to be considered in Step 1, Mr Low cites *Fitzsimmons v R* (1997) 23 ACSR 355. In that decision, the Court of Criminal Appeal of the Supreme Court of Western Australia considered

the following findings of fact in determining whether a sentence imposed on the appellant for financial assistance was appropriate:

(a) the degree of the appellant's knowledge;

(b) the appellant's role in providing information to the accounting firm which prepared a report to support the purchase price of the shares whose acquisition he assisted;

(c) the appellant's withholding of material information which affected the value of the company;

(d) the appellant's role in executing the financial assistance scheme;

(e) the direct benefit conferred unto the appellant as a result of the financial assistance; and

(f) the involvement of substantial sums of money and the serious disadvantage incurred by the company's shareholders as a result of the scheme.[12]

22 In addition, as regards Step 2, Mr Low proposes the following sentencing matrix for offenders who claim trial:[13]

Culpability / **Harm**	**Low**	**Moderate**	**High**
Low	Fine up to $10,000	A short custodial sentence (up to 3 months) may	A short to moderate custodial sentence (3 to

[12] YIC's Submissions dated 11 December 2024 at [54].

[13] YIC's Submissions dated 11 December 2024 at [61].

		be warranted alongside a fine between $10,000 and $15,000	12 months) may be warranted alongside a fine of between $15,000 and $20,000
Moderate	Up to 4 months' imprisonment and/or fine	4 to 12 months' imprisonment and/or fine	12 to 18 months' imprisonment and/or fine
High	Between 4 to 12 months' imprisonment and/or fine	12 to 18 months' imprisonment and/or fine	18 to 36 months' imprisonment and/or fine

23 In his oral submissions, Mr Low clarified that the uneven weight accorded to harm and culpability in his proposed sentencing matrix is deliberate and is intended to give effect to two considerations. The first is to reflect the legislative intent behind s 76, that is, the protection of shareholders and creditors from the harm caused by financial assistance by prescribing substantial increases in sentence to punish said harm. The second is to create a progressive disincentive for the "individual drivers of the offence" who, in his view, exist in each instance of financial assistance and coordinate the multiple parties required to carry out the offence.

24 Relatedly, Mr Low submits that the single starting point approach is unsuitable as a sentencing framework for s 76.[14] This submission is founded on the fact that the single starting point approach requires a notional starting-point sentence to apply in any case. In turn, Mr Low submits that illegal financial assistance does not easily lend itself to a starting-point sentence

[14] YIC's Submissions dated 11 December 2024 at [23].

because such financial assistance can occur in a variety of ways.[15] This will also be discussed in greater detail below.

The Prosecution's position

25 As an alternative to not adopting a sentencing framework, the Prosecution submits that the two-stage five-step approach in *Logachev* would be appropriate for s 76 offences.[16] The Prosecution and Mr Low are in agreement that general deterrence is the predominant sentencing consideration for offences under s 76.[17] However, the Prosecution's proposed sentencing factors and sentencing matrix for the first stage of the *Logachev* analysis differ from those proposed by Mr Low.

26 Under Step 1, the Prosecution submits that the following sentencing factors are relevant:[18]

Factor going towards harm	**Factors going towards culpability**
1. The value of the company's assets that are depleted or placed at risk of potential depletion 2. Extent of harm caused to minority shareholders or creditors 3. Extent of distortion to the market for the public company 4. Damage to public confidence and reputational harm to financial institutions	1. The degree of planning and premeditation and sophistication 2. Period and frequency of offending 3. Motivation for offending 4. Abuse of position and breach of trust 5. Difficulty of detection

[15] YIC's Submissions dated 11 December 2024 at [27].

[16] Prosecution's Further Submissions on Sentence dated 8 January 2025 at [44]

[17] Prosecution's Submissions on Sentence dated 7 August 2024 at [11].

[18] Prosecution's Submissions on Sentence dated 7 August 2024 at [17].

27 The Prosecution, in its written submissions, provides additional details on the weight to be accorded to each of these factors, and how these factors would be applied in practice. This will be discussed in greater detail below.

28 In relation to Step 2, the Prosecution proposes the following sentencing matrix for first time offenders who claim trial:[19]

Harm / **Culpability**	**Low**	**Moderate**	**High**
Low	Fine or up to 6 months' imprisonment	6 to 12 months' imprisonment	12 to 18 months' imprisonment
Moderate	6 to 12 months' imprisonment	12 to 18 months' imprisonment	18 to 24 months' imprisonment
High	12 to 18 months' imprisonment	18 to 24 months' imprisonment	24 to 36 months' imprisonment

29 Lastly, the Prosecution submits that if the court was to adopt its proposed sentencing factors, a sentence of 12–18 months' imprisonment ought to be imposed on Sim. The Prosecution asserts that the harm caused is moderate to high, due to the value of the assets depleted being high relative to the liquid funds of the company, and due to the harm caused to creditors, shareholders, investors, and the Singapore Exchange ("SGX").[20] Likewise, the Prosecution asserts that Sim's culpability is moderate, due to the extent of his

[19] Prosecution's Further Submissions on Sentence dated 8 January 2025 at [47]

[20] Prosecution's Submissions on Sentence dated 7 August 2024 at [25]–[28].

premeditation and planning, his motivation by greed, his abuse of position as the CEO and director of JPS, and the difficulty of detecting his offences.[21]

The Defence's proposed sentencing framework

30 Mr Naidu proposes that a single starting point approach should be adopted.[22] This calls for the identification of a notional starting point which will then be adjusted by taking into account the aggravating and mitigating factors in the case. In support of this, Mr Naidu relies on the case of *Yap Guat Beng v Public Prosecutor* [2011] 2 SLR 689 ("*Yap Guat Beng*"), where this court laid down the sentencing framework for offences under s 148(1) of the Companies Act.

31 For ease of reference, s 148(1) of the Companies Act is reproduced below:

> **Restriction on undischarged bankrupt being director or manager**
>
> **148.**—(1) Every person who, being an undischarged bankrupt (whether he was adjudged bankrupt by a Singapore Court or a foreign court having jurisdiction in bankruptcy), acts as director of, or directly or indirectly takes part in or is concerned in the management of, any corporation, except with the leave of the Court or the written permission of the Official Assignee, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

32 Mr Naidu submits that the "close parallels" between ss 148(1) and 76 of the Companies Act make it such that the *Yap Guat Beng* sentencing approach

[21] Prosecution's Submissions on Sentence dated 7 August 2024 at [30]–[32].

[22] Defence's Further Written Submissions for Sim dated 7 August 2024 at [17].

"can be justifiably transposed and applied to the present case".[23] Specifically, Mr Naidu argues that both provisions share similar policy considerations, namely, the protection of creditors and the public.[24] Mr Naidu also argues that the respective punishment provisions for offences under ss 148(1) and 76 are comparable, as an offender convicted under the former is liable to a fine not exceeding $10,000 or imprisonment for a term not exceeding two years, or to both, and an offender convicted under the latter is liable to a fine not exceeding $20,000 or imprisonment for a term not exceeding three years, or to both.[25]

33 Further, Mr Naidu cites the case of *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [28],[26] where the Court of Appeal observed that:

> … the single starting point approach would be suitable where the offence in question almost invariably manifests itself in a particular way and the range of sentencing considerations is circumscribed. This might be the case, for instance, where one is concerned with a regulatory offence.

34 Mr Naidu asserts that financial assistance is a regulatory offence which almost invariably manifests itself in a particular way.[27] This circumscribes the range of applicable sentencing considerations and therefore makes financial assistance an offence compatible with the single starting point approach.[28]

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[23] Defence's Further Written Submissions for Sim dated 7 August 2024 at [31]

[24] Defence's Further Written Submissions for Sim dated 7 August 2024 at [38]

[25] Defence's Further Written Submissions for Sim dated 7 August 2024 at [44]

[26] Defence's Reply Written Submissions for Sim dated 8 January 2025 at [11]

[27] Defence's Further Written Submissions for Sim dated 7 August 2024 at [43]

[28] Defence's Further Written Submissions for Sim dated 7 August 2024 at [41]–[43]

35 In relation to its proposed sentencing framework, Mr Naidu submits that the starting point should be a fine, which would be appropriate where no harm was caused to anyone arising from the offence and there was no dishonesty in the commission of the offence.[29] Under this framework, the custodial threshold would be crossed where any aggravating factors are present. As regards offence-specific aggravating factors, these would include the manner and mode in which the offence was committed, the motivations for committing the offence, and the harm/loss caused. As for offender-specific aggravating factors, these would encompass the factors that are generally applicable across criminal offences, as established in *Logachev* at [63]–[70].

36 Lastly, Mr Naidu submits that if his proposed sentencing framework was adopted by this court, Sim's offending would not cross the custodial threshold. To this end, Mr Naidu asserts that Sim's offending was one-off and did not transpire over a period of time, did not cause actual harm to the creditors and shareholders of JPH, and did not involve deliberate premeditation.[30]

My decision

The single starting point approach is inappropriate

37 The underlying rationale of s 76 of the Companies Act was set out by Sundaresh Menon JC (as he then was) in *Public Prosecutor v Lew Syn Pau and another* [2006] 4 SLR(R) 210 ("*Lew Syn Pau*"). Specifically, it was held that the legislative purpose of this provision was to preserve the company's

[29] Defence's Further Written Submissions for Sim dated 7 August 2024 at [47]

[30] Defence's Further Written Submissions for Sim dated 7 August 2024 at [48]

capital and prevent the use of its assets in connection with an intended acquisition of its shares, with the ultimate objective of protecting the company and its creditors: see *Lew Syn Pau* at [126] and [151]. These observations were later affirmed by the Court of Appeal in *Wu Yang Construction Group Ltd v Mao Yong Hui* [2008] 2 SLR(R) 350 at [45].

38 For completeness, it should be noted that this protective rationale was subsequently expanded upon. In June 2011, the steering committee tasked with carrying out a fundamental review of the Companies Act ("the Steering Committee") produced a report setting out its recommendations for reform (see *Report of the Steering Committee for Review of the Companies Act* (June 2011). In the report, the Steering Committee affirmed prior judicial observations and stated that "financial assistance restrictions exist to protect creditors and shareholders against misuse and depletion of a company's assets".[31] However, the Steering Committee went on to identify "other secondary purposes of financial assistance prohibitions", namely, "to prevent market manipulation and to inhibit management of the company interfering with the normal market in the company's shares".[32] Evidently, the protective rationale of s 76 of the Companies Act has since come to extend to not just shareholders and creditors of the company, but also to third parties such as the stock market in which that company's stocks are traded and the stock exchange itself.

39 Bearing this in mind, there is some force behind Mr Naidu's submission that *Yap Guat Beng* provides a useful reference in this context. As he rightly

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[31] Ministry of Finance, *Report of the Steering Committee for Review of the Companies Act* (29 April 2011) (Chairman: Walter Woon) at pp 3-21 and 3-23.

[32] Ministry of Finance, *Report of the Steering Committee for Review of the Companies Act* (29 April 2011) (Chairman: Walter Woon) at p 3-23.

pointed out, this court in *Yap Guat Beng* at [32] identified the purpose of s 148(1) of the Companies Act as not only the protection of creditors, but also "to safeguard the greater public interest to prevent an undischarged bankrupt from misusing the corporate structure for collateral purposes to the detriment of innocent third parties".

40 However, this alone is insufficiently persuasive. All things considered, I am unable to accept Mr Naidu's submission that the single starting point approach should be adopted. Mr Naidu asserts that the range of sentencing considerations for s 76 offences is circumscribed, as it "invariably … would entail the company's assets being actually or potentially depleted due to an act where the company's asset was used to finance another party in connection with the acquisition of that company's shares".[33] In my view, describing the act of financial assistance with such a high degree of abstraction is tantamount to restating the *actus reus* of the instant offence and is therefore unhelpful. Instead, this comes off as an attempt to shoehorn the offence of financial assistance into the category of offences that "almost invariably manifests itself in a particular way".

41 In a similar vein, I cannot agree with Mr Naidu's assertion that an offence under s 76 is regulatory in nature. Mr Naidu cites the case of *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [60], for the proposition that "(r)egulatory offences tend to be concerned with the prevention of harm or certain consequences through such enforcement of minimum standards of conduct whereas criminal offences are designed to condemn and punish past wrongful conduct".[34] On this point, I agree with Mr Low that it is unclear

[33] Defence's Further Written Submissions for Sim dated 7 August 2024 at [43]

[34] Defence's Reply Written Submissions for Sim dated 8 January 2025 at [16]

what minimum standard of conduct s 76 imposes. As observed in *Lew Syn Pau* at [152], the ambit of this provision is wide. In my view, this broad statutory wording militates against the notion that s 76 is regulatory in nature, for a minimum standard of conduct in this context may only be identified by viewing the act of financial assistance with a high degree of abstraction.

42 Relatedly, Mr Naidu points to the "whitewashing" mechanism found in s 76 as further evidence of the regulatory nature of s 76. In essence, this "whitewashing" mechanism negates liability for financial assistance if the company obtains approval from its board of directors and/or shareholders by a resolution and complies with the procedures set out in ss 76(9A) to 76(14) of the Companies Act. On this point, I agree with the Prosecution that the presence of a "whitewashing" mechanism does not, without more, alter the nature of the offence. Indeed, the intent of s 76 is to protect creditors and shareholders, and the "whitewashing" mechanism serves to provide these protected classes with notice of financial assistance. In my view, a statutory defence to criminal liability which serves to negate the harm caused by otherwise prohibited conduct cannot be said to diminish the severity of an offence.

43 Therefore, I agree with Mr Low that the single starting point approach is unsuitable. The single starting point approach requires a notional starting point sentence to apply in any case involving the offence in question without first considering any factual elements of said case: see Benny Tan Zhi Peng, "Assessing the Effectiveness of Sentencing Guideline Judgments in Singapore Issued Post-March 2013 and a Guide to Constructing Sentencing Frameworks" (2018) 30 SAcLJ 1004 at Appendix B para 5.[35] As held in

[35] YIC's Submissions dated 11 December 2024 at [23].

Terence Ng at [28], the presence of great variance in the manner in which an offence presents itself, along with a wide range of relevant sentencing considerations, would render the single starting point approach unsuitable. I find that financial assistance is one such offence. As I observed above at [14]–[16], financial assistance is an offence which manifests in a variety of ways and results in consequences of varying severity, such that creditors, shareholders, and third parties are harmed in qualitatively and quantitatively distinct ways.

44 In any event, I find that the notional starting point identified by Mr Naidu, that of a case where no harm was caused to anyone arising from the offence, is untenable. Instead, I agree with Mr Low that an offence under s 76 is constituted at the time the transaction was entered into, which necessarily means that the financial assistance may be provided to the person purchasing the company's shares before or after the shares are actually purchased. Therefore, the notional starting point identified by Mr Naidu, which involves a case where no harm is caused, forces the court to look beyond the point in time when the offence is constituted, which would, in turn, detract from the notional nature of this starting point and consequently the utility of this approach.

The applicable sentencing framework

45 I agree with Mr Low that the two-stage, five-step approach laid down in *Logachev* is the appropriate framework for offences under s 76 of the Companies Act.

46 For the avoidance of doubt, this sentencing framework is based on a situation where the accused claims trial. This accords with the two reasons explained by the Court of Appeal in *Terence Ng* at [40]. First, no uniform

weight can be attached to a plea of guilt. Second, doing so would avoid giving the "appearance" that offenders who claim trial are being penalised for exercising their constitutional right to claim trial.

Step 1: Offence-specific factors

47 As regards the sentencing factors going towards the degree of harm and culpability, I agree with the Prosecution that the following factors are relevant:[36]

Factor going towards harm	Factors going towards culpability
1. The value of the company's assets that are depleted or placed at risk of potential depletion 2. Extent of harm caused to minority shareholders or creditors 3. Extent of distortion to the market for the public company 4. Damage to public confidence and reputational harm to financial institutions	1. The degree of planning and premeditation and sophistication 2. Period and frequency of offending 3. Motivation for offending 4. Abuse of position and breach of trust 5. Difficulty of detection

(1) Factors going towards harm

48 In relation to the value of the company's assets that are depleted or placed at risk of potential depletion, I agree with the Prosecution that actual depletion should be regarded more seriously than potential depletion, given that actual harm would have materialised in respect of the company's finances. Likewise, all things being equal, the larger the amount of financial

[36] Prosecution's Submissions on Sentence dated 7 August 2024 at [17].

assistance provided, the greater the harm caused to the company.[37] Nonetheless, in assessing harm under this factor, the amount involved should be seen relative to the size and financial health of the company, such that sentences imposed may not have a relationship of linear proportionality with the amount involved.

49 Additionally, in relation to the extent of harm caused to minority creditors and shareholders, the Prosecution submits that where there is evidence of loss to identifiable creditors and shareholders, this can be taken into account as a proxy for harm caused.[38] This is uncontroversial, and I agree. However, the Prosecution also submits that there is no need for the sentencing court to be presented with evidence of identified creditors and shareholders who have suffered financial loss, and that the sentencing court could instead infer such loss.[39] In my view, although it is true that the sentencing court may draw inferences where appropriate, I stress that there must be sufficient factual basis to support the inference that the court is asked to draw: see *Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 ("*Chang Kar Meng*") at [39].

50 Turning to the extent of distortion to the market for the public company and the damage to public confidence and reputational harm to financial institutions, these two harm-specific factors seek to give effect to the secondary protective rationale of s 76, as discussed above at [38].

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[37] Prosecution's Submissions on Sentence dated 7 August 2024 at [18]

[38] Prosecution's Submissions on Sentence dated 7 August 2024 at [19]

[39] Prosecution's Submissions on Sentence dated 7 August 2024 at [19]

51 On the extent of distortion to the market for the public company, it is clear that the purchase of the shares of a public company using its own assets would potentially distort the securities market of that company. In this regard, the Prosecution helpfully cites *Public Prosecutor v Wang Ziyi Able* [2008] 2 SLR(R) 1082 ("*Wang Ziyi*") at [1] for the proposition that the distortion of market forces would affect the ability of investors to make informed decisions in relation to their investments and undermine the integrity and efficiency of the market. The Prosecution also suggests that in assessing the extent of distortion, the sentencing court should consider, among other things, the extent of distortion to price and the extent of distortion to trading volume of the securities of the public company.[40] I agree, although I stress again that the Prosecution must lead evidence to support any assertion that this harm-specific factor is present in any given case. Indeed, in *Wang Ziyi* at [32], V K Rajah JA observed that the burden rests entirely on the Prosecution to lead evidence relating to the actual loss to the investing public if it intends to rely on that during sentencing.

52 On the damage to public confidence and reputational harm to financial institutions, it is similarly clear that market distortion caused by financial assistance could affect the reputation of the relevant stock exchange or cause further distortion to the broader securities market. However, as astutely observed by Mr Naidu, s 76 of the Companies Act prohibits only public companies from engaging in financial assistance, and therefore, every instance of financial assistance before a sentencing court will invariably result in some degree of reputational harm to the relevant stock exchange.

[40] Prosecution's Submissions on Sentence dated 7 August 2024 at [20]

53 In this regard, it is helpful to consult *Lau Wan Heng v Public Prosecutor* [2022] 3 SLR 1067 ("*Lau Wan Heng*") at [43(g)], where See J (as he then was) laid down the sentencing framework for offences under s 197(1A)(*a*) of the Securities and Futures Act (Cap 289, 2006 Rev Ed) ("market rigging offences"). In *Lau Wan Heng*, this Court held that in the context of market rigging offences, damage to public confidence and reputational harm to financial institutions would be relevant only if it is over and above what is ordinarily occasioned by market rigging offences. This is logical, as market rigging offences would invariably result in some degree of reputational harm to the relevant stock exchange. Therefore, to consider the mere existence of reputational harm as aggravating in that context would lead to the aggravation of *all* sentences arising from market rigging offences. I adopt this logic, and similarly hold that damage to public confidence and reputational harm to financial institutions would be a relevant harm-specific factor only if it is over and above what is ordinarily occasioned by a financial assistance offence.

54 These harm-specific factors are non-exhaustive, and more factors may be identified as more cases come before the courts.

(2) Factors going towards culpability

55 Turning to culpability, I agree that the following non-exhaustive culpability factors would warrant consideration:

(a) Planning, premeditation and sophistication: These are well-established aggravating factors: *Logachev* at [56]–[58].

(b) Period and frequency of offending: It is well established that an offence perpetrated over a sustained period of time will generally be more aggravated than a one-off offence: *Logachev* at [59].

(c) Motivation for offending: The offender's motive in committing the offence is relevant: *Ye Lin Myint v Public Prosecutor* [2019] 5 SLR 1005 at [51]–[53]. Thus, for instance, a person who engages in financial assistance for personal gain would possess a higher degree of culpability.

(d) Abuse of position and breach of trust: An egregious abuse of position and breach of trust can be treated as aggravating the offender's culpability: *Wong Kai Chuen Philip v Public Prosecutor* [1990] 2 SLR(R) 361 at [23].

(e) Difficulty of detection: Lastly, the difficulty of detection would increase the culpability of the offender: *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [25(d)]. In the context of s 76, this should be a factor that is distinct from the factor of planning and premeditation. As observed in *Lew Syn Pau* at [170], financial assistance may not be given through a "single, direct, uninterrupted causal link between the company and the recipient of the financial assistance" and might instead be given "through numerous intermediaries and in a form that does not fall within a conventional understanding of [financial assistance]".

56 However, a note of caution is in order, namely, that double counting ought to be avoided when accounting for an offender's increased culpability by virtue of an abuse of position and breach of trust. While s 76(1)(*a*)(ii)(B) of the Companies Act contains the prohibition on financial assistance,

personal criminal liability on the part of a company's officers is imposed through s 76(5) of the Companies Act. Thus, the fact than an offender is an officer of the company would be inherent in every such offence, and to find that an offender has an increased level of culpability solely on the basis that he is an officer of the company would contravene the rule against double counting. As noted in Menon CJ's decision in *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen Balakrishnan*") at [84], one situation in which double counting occurs is when a factor that is an essential element of the charge is taken also as an aggravating factor enhancing the sentence within the range of applicable sentences for that charge.

57 That is not to say that the abuse of position and breach of trust can *never* arise in the context of s 76. As Mr Low rightly points out, a distinction can be made between illegal financial assistance which is conducted in good faith for the benefit of the company, and illegal financial assistance which is objectively detrimental to the interests of the company. In the former scenario, the officer of the company may be said to have authorised and permitted the transaction, but there is no abuse of position or breach of trust. However, in the latter scenario, there is an abuse of position and breach of trust, because the officer has been given powers under the company's constitution and the Companies Act and would therefore be expected to exercise these powers in good faith in the interests of the company. In short, to find an abuse of position and breach of trust in the context of s 76, something *more* than mere authorisation of the transaction which underlies the financial assistance is needed.

Step 2: Indicative sentencing range

58 Once the sentencing court has identified the level of harm caused by the offence and the level of the offender's culpability, the second step is to identify the applicable indicative sentencing range.

59 In this regard, I am unable to agree with Mr Low's suggestion that harm and culpability should be accorded unequal weight in identifying the indicative sentence. As held in *Logachev* itself at [44] and [47], the *Logachev* approach does not single out any particular factor as a primary sentencing factor, because doing so would have the potential of diverting attention away from other relevant sentencing considerations. This would be especially undesirable when dealing with offences that may be committed in a wide range of scenarios, as is presently the case with s 76 of the Companies Act.

60 Mr Low's proposed indicative sentencing ranges also pose some practical issues. Mr Low does not explain why fines may be imposed within all categories of the harm-culpability matrix. Neither does he explain why conjunctive sentences (*ie*, a fine in conjunction with a term of imprisonment) should be imposed for cases of low harm and moderate or high culpability.[41] In my view, unless such fines are imposed to disgorge profits made from committing the offence, courts should be slow to impose conjunctive sentences save for when the maximum permitted custodial sentence is considered to be inadequate: see *Ho Sheng Yu Garreth v Public Prosecutor* [2012] 2 SLR 375 at [125].

[41] YIC's Submissions dated 11 December 2024 at [16]

61 Instead, I adopt the indicative sentencing ranges proposed by the Prosecution:[42]

Harm / Culpability	**Slight**	**Moderate**	**Severe**
Low	Fine or up to 6 months' imprisonment	6 to 12 months' imprisonment	12 to 18 months' imprisonment
Medium	6 to 12 months' imprisonment	12 to 18 months' imprisonment	18 to 24 months' imprisonment
High	12 to 18 months' imprisonment	18 to 24 months' imprisonment	24 to 36 months' imprisonment

62 Relatedly, within the low harm, low culpability category, I find that the custodial threshold is crossed where: (a) the value of the company's assets that are actually or potentially depleted is significant relative to the size of the company, and (b) there is distortion in the market of the company's securities.

Step 3: Identify starting point within the indicative range

63 At the third step of this framework, the starting point within the indicative starting range should be identified, having regard to the level of harm caused by the offence and the offender's culpability: see *Logachev* at [79].

[42] Prosecution's Further Submissions on Sentence dated 8 January 2025 at [47]

Step 4: Adjust the starting point to account for offender-specific factors

64 The fourth step is to make appropriate adjustments to the starting point by considering the offender-specific aggravating and mitigating factors: see *Logachev* at [80]. I agree with the Prosecution that these would include, among other things, the following considerations:[43]

Aggravating factors	Mitigating factors
1. Relevant antecedents 2. Offences taken into consideration for the purpose of sentencing 3. Evident lack of remorse	1. Timely plea of guilt 2. Cooperation with the authorities 3. Restitution

Step 5: Adjust the sentence to take into account the totality principle

65 In cases where an offender has been convicted of multiple charges, the fifth step is to consider the need to make further adjustments to take into account the totality principle: see *Logachev* at [81].

Calibrating an appropriate sentence for Sim

66 I now apply this sentencing framework to the present appeal.

67 With respect to the level of harm caused by Sim, the Prosecution submits that Sim's offence should be placed within the "moderate to high harm" category,[44] whereas Mr Naidu submits that Sim's offence was one of low harm.[45]

[43] Prosecution's Further Submissions on Sentence dated 8 January 2025 at [51]

[44] Prosecution's Submissions on Sentence dated 7 August 2024 at [33]

[45] Defence's Reply Written Submissions for Sim dated 8 January 2025 at [79]

68 I first consider the value of the company's assets that are depleted. The loan taken on by JPS to financially assist Tjioe's purchase of JPH's shares amounted to $535,000, a high figure relative to the liquid funds that JPS and JPH had. Although the pre-listing financial statements of both JPS and JPH are unavailable, the post-listing cash and bank balances of both entities are available and reproduced below:[46]

	JPS	**JPH**
2013	$38,189	$7,231,885 (IPO proceeds)
2014	$10,553	$255,361
2015	$4,618	$405,337
2016	-	$100,188

69 In addition, there was actual depletion of JPS' assets. The $535,000 loan was taken out in September 2012 and was repayable within 150 days. It is undisputed that JPS did indeed repay the loan within the stipulated period. However, this sum of $535,000 was not fully credited back to the company until 22 months later, when Tati contra-ed this sum against future invoices on 28 February and 31 July 2014.[47] In those 22 months, JPS experienced significant cashflow issues, to such an extent that it delayed paying staff their salaries and regularly owed its suppliers monies.[48] Thus, I agree with the Prosecution that the value of the assets depleted is high relative to the assets of the company.[49]

[46] Record of Appeal ("ROP") at pp 4009–4011 Exhibits P46 and P47.

[47] ROP at pp 3416 and 3569 Exhibits P8 and P9.

[48] Notes of Evidence ("NEs"), Day 4, p 7 lines 1–18; ROP at p 390.

[49] Prosecution's Submissions on Sentence dated 7 August 2024 at [25(c)]

70 Relatedly, the Prosecution emphasises that JPS took on a debt to finance the purchase of JPH's shares and submits that this in itself is more aggravating than if existing capital was used due to the increased risk of insolvency inherent in taking on debt.[50] On this point, I agree with Mr Naidu that this argument is circular, since it is premised on the *potential* depletion that may occur if the debt is not repaid. I hence decline to aggravate the harm caused by Sim's offence on this basis *per se*. Be that as it may, as I discussed above at [68]–[69], and as the Prosecution argues, there was, in this case, *actual* depletion which materialised only *after* JPS repaid the debt it took out. This eliminates the aforementioned *potentiality* of depletion, and hence, aggravates Sim's offence. As I held above at [48], actual depletion should be regarded more seriously than potential depletion.

71 Turning to the extent of harm caused to minority shareholders or creditors, the Prosecution submits that JPS' creditors suffered harm in the form of an increased risk of insolvency of JPS (*ie*, potential harm).[51] I accept this submission but accord it no weight, as doing so would contravene the rule against double counting: see *Raveen Balakrishnan* at [87]. This is because I had previously already considered the risk of exposure that JPS' creditors were not aware of and did not agree to bear, in the *Conviction Judgment* at [67]–[69], in relation to Sim's cheating charges.

72 The Prosecution also argues that the other shareholders of JPH who invested during JPH's IPO suffered harm, as they would have subscribed for shares on the mistaken belief that JPH's finances were of a certain quantum without knowing that its assets were used to fund another shareholder's IPO

[50] Prosecution's Submissions on Sentence dated 7 August 2024 at [25(a)]

[51] Prosecution's Submissions on Sentence dated 7 August 2024 at [26(a)]

subscription.[52] I see the force in this argument. However, the Prosecution has neither presented this court with evidence of identified creditors and shareholders who suffered financial loss, nor provided a sufficient factual basis for this inference to be drawn: see *Chang Kar Meng* at [39]. Therefore, I accord no weight to this submission.

73 Furthermore, the Prosecution argues that there was some distortion to the market for the shares of JPH.[53] The Prosecution points to the fact that Tjioe's $562,000-purchase of the 2.5 million JPH shares represented about 7.4% of the total amount of $7.605 million raised in the IPO, making him the second largest purchaser in JPH's IPO. The Prosecution also submits that but for Sim's provision of financial assistance, JPH's IPO would not have taken place.[54] However, as Mr Naidu points out,[55] the IPO of JPH was oversubscribed by 1.2 times.[56] In addition, I note that JPH's final pricing memorandum dated 7 September 2012 states that it had garnered indicative orders for 41.9 million shares.[57] Thus, I am unable to agree with the Prosecution's submissions on this point, as there is no clear evidence which points to the extent of distortion to either the price or trading volume of these shares, the very two touchstones which the Prosecution itself had proposed above at [51].

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[52] Prosecution's Submissions on Sentence dated 7 August 2024 at [26(b)]

[53] Prosecution's Submissions on Sentence dated 7 August 2024 at [27(a)]

[54] Prosecution's Submissions on Sentence dated 7 August 2024 at [27(b)].

[55] Defence's Reply Written Submissions for Sim dated 8 January 2025 at [64]

[56] NEs, Day 10, p 11 lines 3–17; ROP at p 1280.

[57] ROP at p 3617; Exhibit P12 at p 9.

74 Relatedly, the Prosecution submits that some reputational harm has been caused to the SGX.[58] On this point, the Prosecution reasons that "it is likely SGX would not have allowed the listing" had it known that Sim was using JPH's assets to indirectly fund the IPO, and that it has suffered reputational loss due to Sim's offending since investors can reasonably question the quality of companies listed on the SGX as well as the SGX's ability to maintain its controls.[59] I reject the Prosecution's submissions on this point. As I have observed above at [53], for the court to treat it as an aggravating factor, reputational harm has to be over and above what is ordinarily occasioned by s 76 offences. Presently, the Prosecution has not led any evidence to demonstrate this.

75 Therefore, in my view, the level of harm caused in this case is on the lower end of the moderate category.

76 With respect to Sim's level of culpability, the Prosecution submits that Sim's offending falls within the "medium culpability" category,[60] whereas Mr Naidu submits that Sim's culpability "is at the higher end of the range of low".[61]

77 I first consider the degree of planning and premeditation. I agree with the Prosecution that Sim single-handedly masterminded the financial assistance scheme and planned the offence.[62] In the *Conviction Judgment* at

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[58] Prosecution's Submissions on Sentence dated 7 August 2024 at [28]

[59] Prosecution's Submissions on Sentence dated 7 August 2024 at [28]

[60] Prosecution's Submissions on Sentence dated 7 August 2024 at [33]

[61] Defence's Reply Written Submissions for Sim dated 8 January 2025 at [84]

[62] Prosecution's Submissions on Sentence dated 7 August 2024 at [29(a)]

[87], I found that Sim was the officer in JPH who informed JPS' suppliers, including Tjioe, about the IPO and recommended they purchase the shares.

78 I turn to consider Sim's motivation for offending. I agree with the Prosecution that Sim was motivated by personal benefit and greed when he committed the s 76 offence.[63] I agree that as the majority shareholder of JPH, with 57.5% of JPH's shares before the IPO placement, Sim made a significant financial gain when JPH successfully listed at an IPO price of $0.225. In his statements, Sim also conceded that he wanted JPH to be a listed company because his company would garner more respect, which would make it easier for his company to go international.[64] However, I accord no weight to this in the sentencing exercise. As rightly pointed out by Mr Naidu and Mr Low,[65] I had previously considered this factor when applying an uplift to Sim's sentence in respect of the First Cheating Charge, in the *Conviction Judgment* at [72]. Thus, to consider this an aggravating factor in the present sentencing exercise would contravene the rule against double counting. As stated in *Raveen Balakrishnan* at [87], if a factor has been fully taken into account at one stage in the sentencing analysis, it should generally not feature again at another stage.

79 On the factor of abuse of position and breach of trust, I agree with the Prosecution and Mr Low that Sim has breached the trust placed in him as an officer of JPS.[66] As I observed above at [57], officers of a company are given powers under the company's constitution and the Companies Act and would

[63] Prosecution's Submissions on Sentence dated 7 August 2024 at [30]

[64] ROP at p 4132 Exhibit P56.

[65] Defence's Reply Written Submissions for Sim dated 8 January 2025 at [73]

[66] Prosecution's Submissions on Sentence dated 7 August 2024 at [31]

therefore be expected to exercise these powers in good faith in the interests of the company. However, instead of doing so, Sim utilised his powers to provide financial assistance to Tjioe, which exposed JPS to significant financial risk in exchange for timber which did not exist: see the *Conviction Judgment* at [53]. This was objectively detrimental to the interests of JPS. For the avoidance of doubt, it is on this basis, and not the mere fact that Sim was an officer of JPS who authorised the transaction which undergirded the financial assistance,[67] that I find that Sim has breached the trust placed in him.

80 On the difficulty of detection, I agree with the Prosecution that Sim's s 76 offence was difficult to detect.[68] Indeed, the financial assistance provided was given indirectly, disguised as an invoice financing loan and recorded as a "deposit" for a supply of non-existent timber. Furthermore, the s 76 offence was only brought to light after a funds tracing exercise, which allowed investigators to match the timing of the loan to Tjioe's use of the funds to purchase shares in the IPO.

81 Taken together, I find that Sim's level of culpability is on the lower end of medium.

82 The second step is to identify the applicable indicative sentencing range. Based on the matrix set out at [61] above, the applicable indicative sentencing range for Sim would be 12 to 18 months' imprisonment.

83 The third step is to identify the appropriate starting point within the indicative sentencing range. Considering the discussion at [66]–[81] above,

[67] Defence's Reply Written Submissions for Sim dated 8 January 2025 at [78]

[68] Prosecution's Submissions on Sentence dated 7 August 2024 at [32]

Sim's sentence should fall at the lowest end of the indicative sentencing range, at 12 months' imprisonment.

84 The fourth step is to make such adjustments to the starting point as may be necessary to take into account the offender-specific aggravating and mitigating factors identified in the table at [64] above. In my view, none are applicable in the instant case, as there are no relevant offender-specific factors, and I place no weight on Sim's medical condition as a mitigating factor. As I observed in the *Conviction Judgment* at [74], there is no evidence that Sim's medical condition would cause the term of imprisonment to have a markedly disproportionate impact on him.

The global sentence for Sim

85 I now turn to address the sole outstanding issue in respect of Sim, which is the global sentence to be imposed. This coheres with the fifth step of the sentencing framework, which is to consider the need to make further adjustments to take into account the totality principle where the offender faces multiple charges: *Logachev* at [107].

86 In the *Conviction Judgment* at [75], I imposed the following sentences:

Cheating Charges	Amount involved ($2,035,000 in total)	Sentence imposed on appeal
1st Charge (DAC-924315-2018)	$535,000 (DBS)	**19 months' imprisonment**
2nd Charge (DAC-924316-2018)	$300,000 (SCB)	**12 months' imprisonment**
3rd Charge (DAC-924317-2018)	$500,000 (Maybank)	**18 months' imprisonment (Consecutive)**

4th Charge (DAC-924318-2018)	$200,000 (SCB)	**8 months' imprisonment (Consecutive)**
5th Charge (DAC-924319-2018)	$500,000 (DBS)	**18 months' imprisonment (Consecutive)**

87 The Prosecution submits that the sentence for the s 76 offence should be run consecutively with the aggregate sentence imposed in respect of Sim's Cheating Offences,[69] whereas Mr Naidu submits that it should run concurrently instead, by virtue of the one-transaction principle and the totality principle.[70]

88 The Prosecution's submissions on this point are legally sound. In *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*") at [32], Menon CJ held that the one-transaction principle is an *evaluative* rule, such that the proximity of time and proximity of type of offence are not determinative of whether the one-transaction rule is engaged. Instead, the "real basis" of the one-transaction rule is unity of the violated interest that underlies the various offences: *Shouffee* at [31]. This was reiterated by Menon CJ in *Raveen Balakrishnan* at [39], where it was observed that the question of whether various offences form part of a single transaction depends on whether they entail a single invasion of the same legally protected interest.

89 In the instant case, I agree with the Prosecution that Sim's Companies Act Charge violated a different legally protected interest from the Cheating Charges. As I observed above at [37]–[38], the legislative purpose of s 76 is

[69] Prosecution's Submissions on Sentence dated 7 August 2024 at [38]

[70] Defence's Reply Written Submissions for Sim dated 8 January 2025 at [91]

to protect a company's shareholders and creditors by preserving its capital (*ie*, capital maintenance), which is conceptually distinct from the legally protected property interest engaged by the Cheating Charges. In addition, it is worth noting that the Companies Act Charge and Cheating Charges affected different groups – the Companies Act Charge primarily harmed JPS, whereas the Cheating Charges harmed three banks.

90 However, if I were to accept the Prosecution's submissions on this point, the result would be a provisional aggregate sentence of 56 months' imprisonment. In my view, this provisional aggregate sentence would contravene the first limb of the totality principle, as articulated in *Shouffee* at [54]. Indeed, the first limb of the totality principle examines whether "the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences committed". Bearing this in mind, a provisional aggregate sentence of 56 months' imprisonment would be almost triple the longest individual sentence imposed on Sim (namely, 19 months' imprisonment for the First Cheating Charge). Thus, on account of the totality principle, I hold that Sim's sentence for the Company Act Charge should be run concurrently with the aggregate sentence of 44 months' imprisonment that was imposed in the *Conviction Judgment* at [75].

91 For the foregoing reasons, the aggregate sentence imposed on Sim remains at 44 months' imprisonment.

Calibrating an appropriate sentence for Tjioe

92 Turning to Tjioe, the Prosecution submits that an aggregate sentence of 30–36 months' imprisonment should be imposed in respect of the Abetment

of Cheating Charges,[71] whereas counsel for Tjioe, Mr Shashi Nathan ("Mr Nathan"), submits that an aggregate sentence of 21–25 months' imprisonment would be appropriate.[72] The individual sentences proposed by both parties are reproduced below for reference:

Charge	Amount involved	Sentence imposed on Sim	Prosecution's Proposed sentence for Tjioe	Mr Nathan's Proposed sentence for Tjioe
1st Charge (DAC-924348-2018)	$535,000	19 months' imprisonment	**14–16 months' imprisonment**	**13 months' imprisonment**
2nd Charge (DAC-924349-2018)	$300,000	12 months' imprisonment	**7–9 months' imprisonment**	**8 months' imprisonment**
3rd Charge (DAC-924350-2018)	$500,000	18 months' imprisonment (Consecutive)	**13–15 months' imprisonment**	**12 months' imprisonment**
4th Charge (DAC-924351-2018)	$200,000	8 months' imprisonment (Consecutive)	**3–5 months' imprisonment**	**5 months' imprisonment**
5th Charge (DAC-924352-2018)	$500,000	18 months' imprisonment (Consecutive)	**13–15 months' imprisonment**	**12 months' imprisonment**
Aggregate sentence		44 months' imprisonment	**30–36 months' imprisonment**	**21–25 months' imprisonment**

[71] Prosecution's Submissions on Sentence dated 7 August 2024 at [41]

[72] Mitigation Plea for Tjioe dated 7 August 2024 at [4]

93 Broadly, the Prosecution and Mr Nathan agree that the individual sentences imposed on Tjioe should be pegged at around two-thirds of those imposed on Sim. Indeed, the Prosecution acknowledges that Tjioe's culpability is lower than that of Sim, and that a 3–5 months' downwards calibration from the individual sentences imposed on Sim would be appropriate.[73] In a similar vein, Mr Nathan relies on my decision in *Yeo Kee Siah v Public Prosecutor and another appeal* [2024] SGHC 77 ("*Yeo Kee Siah*"), to support his submission that the individual sentences imposed on Tjioe should be pegged at two-thirds of those imposed on Sim.[74] The case of *Yeo Kee Siah* similarly involved the abetment of trade financing fraud against banks, and in that case, I affirmed the decision of the court below to peg the abettor's sentences for the cheating charges at two-thirds of the primary offender's.

94 I agree with the assessment of both parties. I find that the harm-specific factors I identified in respect of Sim's Cheating Charges, in the *Conviction Judgment* at [67]–[69], apply with equal force to Tjioe's Abetment of Cheating Charges. Indeed, Tjioe and Sim face charges which involve the same three banks and the same quantum of $2,035,000. Similarly, I find that Tjioe is less culpable than Sim, the primary offender in respect of the Cheating Charges. Nonetheless, for reasons I identified in the *Conviction Judgment* at [94]–[95], I find that there was a considerable degree of planning and premeditation on the part of Tjioe, and that Tjioe was aware of all key aspects of the fraudulent scheme.

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[73] Prosecution's Submissions on Sentence dated 7 August 2024 at [42]

[74] Mitigation Plea for Tjioe dated 7 August 2024 at [18]

95 Accordingly, I impose the following sentences on Tjioe in respect of the Abetment of Cheating Charges:

Charge	Amount involved	Sentence imposed
1st Charge (DAC-924348-2018)	$535,000	**14 months' imprisonment**
2nd Charge (DAC-924349-2018)	$300,000	**7 months' imprisonment**
3rd Charge (DAC-924350-2018)	$500,000	**13 months' imprisonment**
4th Charge (DAC-924351-2018)	$200,000	**4 months' imprisonment**
5th Charge (DAC-924352-2018)	$500,000	**13 months' imprisonment**

96 The outstanding point of contention in respect of Tjioe is the number of individual sentences which should be run consecutively. Mr Nathan submits that only two of the sentences for Tjioe's Abetment of Cheating Charges should run consecutively. Mr Nathan cites *Yeo Kee Siah* as precedent for this, as the court below in that case ordered fewer sentences to run consecutively for the abettor as compared to the primary offender.[75] On the other hand, the Prosecution submits that sentences in respect of the first, fourth and fifth Abetment of Cheating Charges should run consecutively.[76]

[75] Mitigation Plea for Tjioe dated 7 August 2024 at [37]

[76] Prosecution's Submissions on Sentence dated 7 August 2024 at [48]

97 In my view, *Yeo Kee Siah* may be helpfully distinguished, as the abettor in that case faced a lower number of charges and, crucially, had a lower amount of loss attributable to his offending as compared to the primary offender: see *Yeo Kee Siah* at [92]. As I observed above at [94], in the instant case, Tjioe and Sim face charges which involve the same banks and the same quantum.

98 Instead, I hold that the three Abetment of Cheating Charges should be run consecutively in view of the fact that Tjioe's offending had affected three distinct banks.

99 Therefore, I order the third, fourth, and fifth Abetment of Cheating Charges (DAC-924350-2018, DAC-924351-2018, and DAC-924352-2018) to run consecutively, in light of the fact that there were three distinct banks that were affected by Tjioe's offences. This amounts to an aggregate sentence of 30 months' imprisonment.

Conclusion

100 For the reasons above, I sentence Sim to an aggregate sentence of 44 months' imprisonment, and Tjioe to an aggregate sentence of 30 months' imprisonment.

101 It remains for me to thank Mr Low for his thorough research and comprehensive submissions on the legal issues, from which I have derived considerable assistance.

Vincent Hoong
Judge of the High Court

Kevin Yong and Tan Zhi Hao (Attorney-General's Chambers) for the Prosecution;
Navindran Naidu and Chloe Chen (Dentons Rodyk & Davidson LLP) for Jason Sim Chon Ang;
Shashi Nathan, Jeremy Pereira and Tan Jia Yi (Withers KhattarWong LLP) for Tjioe Chi Minh.
Darren Low Jun Jie (JWS Asia Law Corporation) as young independent counsel.