IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

District Arrest Case No DAC 916071 of 2020 and Others

Public Prosecutor

Against

Lim Oon Kuin

ORAL JUDGMENT
(SENTENCE)

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Principal District Judge Toh Han Li

11-12 April 2023, 17-20 April 2023, 24-27 April 2023, 2-5 May 2023, 8-9 May 2023, 25-26 May 2023, 29-31 May 2023, 5-9 June 2023, 12-15 June 2023, 20-23 June 2023, 26-28 June 2023, 3-6 July 2023, 10-13 July 2023, 17-19 July 2023, 13 October 2023, 30-31 October 2023, 1-3 November 2023, 20-24 November 2023, 27-29 November 2023, 12 April 2024, 10 May 2024, 15 October 2024

18 November 2024

Principal District Judge Toh Han Li

Introduction

1. This is my oral judgment on sentence which may be supplemented if required.

2. The Accused was convicted after a trial on the following three charges:

1st charge (DAC-916071-2020)

You….are charged that you, on or before 19 March 2020, in Singapore, did deceive The Hongkong and Shanghai Banking Corporation Limited ("HSBC"), by representing to HSBC, through employees of Hin Leong Trading (Pte) Ltd ("HLT"), that HLT had entered into a contract with China Aviation Oil (Singapore) Corporation Ltd with payment of USD 56,065,852.74 being due on 17 April 2020, and by such deception dishonestly induced HSBC into delivering US$56,065,852.74 to HLT, and you have thereby committed an offence under Section 420 of the Penal Code (Chapter 224, 2008 Revised Edition).

2nd charge (DAC-919386-2020)

You….are charged that you, on or before 19 March 2020, in Singapore, did abet the commission of an offence, *to wit*, forgery for the purpose of cheating, by instigating one Tan Jie Ren, Freddy ("Freddy"), a Contracts Executive of Hin Leong Trading (Pte) Ltd ("HLT"), to fraudulently make a false electronic record, *to wit*, you instructed Freddy to make an email with the subject 'CAO – SALE OF GASOIL 10PPM SULPHUR / [S9797G]' (the "CAO Email") purportedly sent from HLT to China Aviation Oil (Singapore) Corporation Ltd on 26 February 2020 at 4.41 p.m., intending that the said CAO Email shall be used for the purpose of cheating, namely, for the purpose of discounting Invoice No. SO-102780 issued in connection with the purported contract contained in the CAO Email, which act was committed in consequence of the abetment, and you have thereby committed an offence under Section 468 of the Penal Code (Chapter 224, 2008 Revised Edition) read with Section 109 of the same Code.

129th charge (DAC-911858-2021)

> You…are charged that you, on or before 23 March 2020, in Singapore, did deceive The Hongkong and Shanghai Banking Corporation Limited ("HSBC**")**, by representing to HSBC, through employees of Hin Leong Trading (Pte) Ltd ("HLT"), that HLT had entered into a contract with Unipec Singapore Pte Ltd with payment of USD 55,803,699.87 being due on 4 May 2020, and by such deception dishonestly induced HSBC into delivering US$55,803,699.87 to HLT, and you have thereby committed an offence under Section 420 of the Penal Code (Chapter 224, 2008 Revised Edition).

Antecedents

3. The Accused is untraced.

The Prosecution's submissions on sentence

4. The Prosecution sought the following sentences:

SN	Offence	Details	Sentence sought
1.	1st charge (DAC-916071-2020) s 420 Penal Code	Concerns the deception and forgery that Hin Leong ("HLT") had entered into a contract with China Aviation Oil (Singapore) Corporation Ltd ("CAO'), which induced The Hongkong and Shanghai Banking Corporation Limited ("HSBC') into disbursing USD 56,065,852.74 to HLT. HSBC's unrecovered losses were USD 29,652,677.80	**Ten years' imprisonment (consecutive)**
2.	2nd charge (DAC-919386-2020) s 468 read with s 109 Penal Code		Nine years' imprisonment (concurrent)

3.	129th charge (DAC-911858-2021) s 420 Penal Code	Concerns the deception that HLT had entered into a contract with Unipec Singapore Pte Ltd ("Unipec") which induced HSBC into disbursing USD 55,803,699.87 to HLT. HSBC's outstanding losses were USD 55,681,167.04	**Ten years' imprisonment (consecutive)**
Global: 19 – 20 years' imprisonment (no more than one year discount on the above sentences for the Accused's advanced age)			

5. For the cheating charges involving the CAO and Unipec transactions (1st and 129th charges), the Prosecution sought the maximum sentence of ten years' imprisonment per charge.

6. For the forgery charge involving the CAO transaction (2nd charge), the Prosecution sought nine years' imprisonment (out of the maximum ten years' imprisonment).

7. The Prosecution submitted that both the Accused's cheating offences were among the most serious instances of cheating offences in question, while the CAO forgery offence was close to being among the most serious instances, due to the sheer amount that was cheated via the forged documents.

8. The Prosecution relied on the following offence-specific factors with regard to the harm caused by the offences:

a) The amount of monies cheated, and the losses caused to HSBC;

b) The Accused's offences affected Singapore's financial services and economic infrastructure; and

c) The Accused's offences potentially undermined public confidence in Singapore's oil industry.

9. The Prosecution relied on the following offence-specific factors with regard to the culpability of the Accused:

a) The Accused's role in the offences, as the mastermind who directed his employees to commit the offences;

b) The premeditation and planning involved;

c) The Accused's motivation for offending; and

d) The difficulty of detection of the offences.

Harm factors

10. The Prosecution submitted that the amounts cheated in the present case were quite unprecedented in Singapore's criminal history. HSBC was deceived into disbursing about USD 55 to 56 million per cheating charge with a total of USD 111 million to HLT. In terms of s 468 Penal Code precedents, this was the largest amount ever.

11. To this end, the Prosecution submitted that the amounts cheated in the present case were larger than those in *Public Prosecutor v Chia Teck Leng* [2004] SGHC 68 ("*Chia Teck Leng*"), where the total amount cheated was SGD 117 million and where the amounts concerned in each charge ranged from USD 1 to 30 million. In the history of Singapore's trade financing fraud cases, the amounts in the Accused's cheating charges were second only to the amounts in *Public Prosecutor v Lim Beng Kim, Lulu* [2023] SGDC 9 ("*Lulu Lim*"). In these two cases, for the charges involving the highest sums, sentences on the high end or close to the maximum term of imprisonment were imposed, despite the offenders having pleaded guilty.

12. The outstanding loss for the CAO transaction stood at USD 29,652,677.88, after taking into account the discount fee charged for the discounting application, as well as the sums that were subsequently set-off from HLT's HSBC bank account against the monies disbursed by HSBC pursuant to that transaction.

13. For the Unipec cheating charge, HSBC's loss remained unmitigated by any subsequent set-off, and stood at USD 55,681,167.04, after taking into account the discount fee that HSBC charged for the discounting application.

14. As such, HSBC's total outstanding losses for the CAO and the Unipec transactions amounted to USD 85,333,844.92. This was higher than the outstanding loss in *Chia Teck Leng*, and second only to *Lulu Lim* in the history of Singapore's trade financing fraud cases.

15. In relation to the amounts that HSBC did recover through deductions from HLT's HSBC bank account, the Prosecution submitted that less mitigatory

weight should be given to such recovery as it was not motivated by the Accused's remorse. Instead, the offer to facilitate such recovery was made during the Accused's 12 April 2020 call with HSBC, purely in order to buy time.

16. The Prosecution submitted that offences affecting the delivery of financial services and the integrity of our economic infrastructure must attract more severe, deterrent sentences: *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [24(e)] and *Idya Nurhazlyn bte Ahmad Khir v Pubic Prosecutor and another appeal ("Idya")* at [49] and *Public Prosecutor v Sim Chon Ang Jason and other appeals* [2024] SGHC 169 *("Sim Chon Ang Jason")* at [64].

17. The Prosecution submitted that the Accused's offences had the potential to threaten public confidence in Singapore's oil industry. This was evidenced by the fact that HLT's collapse in April 2020 generated such concern that *three* Government agencies (namely, Enterprise Singapore, the Maritime and Port Authority of Singapore and the Monetary Authority of Singapore) found it necessary to issue a joint statement on 21 April 2020 ("the Joint Statement") to provide assurance that there had been "[n]o serious impact on [the] oil trading and bunkering sectors" and that Singapore's "banking system remains sound". The Monetary Authority of Singapore reminded "banks not to de-risk indiscriminately from the bunkering and oil trading sectors".

Culpability factors

18. The Prosecution submitted that the Accused masterminded the offences and directed his employees to commit the offences. At the material time of the

offences, the Accused was the "big boss" of HLT to whom staff would look for approval of Hin Leong's matters. The Accused was perched at the very apex of HLT as the head of the "family business".

19. There was therefore "no question" that the Accused's offences could potentially benefit himself as shareholder of HLT, although the Prosecution acknowledged that this "cannot be automatically equated with an intention to gain personally": *Chew Soo Chun v Public Prosecutor and another appeal* [2016] 2 SLR 78 ("*Chew Soo Chun*") at [70].

20. The Prosecution submitted that there was no evidence that the Accused's motivation in trying to save HLT was to help his employee's jobs. The Prosecution submitted that the Accused's defence at trial showed that he regarded his employees as nothing more than pawns to achieve his own ends, as he tried to make them scapegoats for his own fraudulent conduct. Not only did he falsely accuse Serene Seng (his personal assistant and head of the contracts department at HLT) of orchestrating the false discounting applications of her own accord, the Defence also suggested that she had suborned witnesses and colluded with others to pervert the course of justice. That the Accused could do this despite his 20-year long working relationship with Serene Seng, whom he purported to regard like a daughter, underscored the Accused's lack of genuine care for his employees.

21. The Prosecution submitted that the present offences were difficulty to detect as banks and financial institutions such as HSBC had little choice but to rely on the information provided by the applicant in financing applications because such information is often uniquely within the latter's knowledge such

as the details of the transaction for which financing is sought and the difficulty of verifying such information via other means.

22. As the relevant applications were for silent discounting where the purported buyers would not be notified of the financing arrangement between HSBC and HLT, and indeed HSBC could not do so without HLT's consent save in specific circumstances. In the circumstances, HSBC had no means of verifying the purported sales apart from via HLT.

Comparison with precedent cases

23. The Prosecution submitted that a comparison of the present case to *Chia Teck Leng* and *Lulu Lim* showed that the maximum sentences sought for the Accused's cheating offences were justified. In *Chia Teck Leng*, sentences close to the maximum for cheating were imposed for sums comparable to the present case, and in a case where the offender had pleaded guilty. Given that the Accused was not entitled to a sentencing discount for pleading guilty, and given the additional aggravating factor of the potential damage to the reputation of Singapore's oil industry which was not present in *Chia Teck Leng*, the imposition of the maximum sentence in the present case was warranted.

24. In *Lulu Lim*, the charges involved sums covering a wider range, from USD 11 million to USD 100 million, and losses ranging from USD 9.9 million to USD 90.7 million. The District Court held at [42] that "the maximum sentence of 10 years' imprisonment would have been appropriate for each of her offences involving higher amount of cheated funds" but for two factors: (i) that the offender was not the mastermind behind the cheating offences; and (ii)

that the offender was not motivated by greed and had offended "to keep AIPL afloat and its employees in employment".

25. While the amounts cheated fall within the middle range of the amounts in *Lulu Lim*: at about USD 55 to USD 56 million per charge, and losses of about USD 29.6 million for the CAO cheating charge and USD 55 million for the Unipec cheating charge, the Prosecution submitted that none of the mitigating factors identified by the District Court in *Lulu Lim* applied in the present case. The Accused was the mastermind behind the offences and had in fact directed his employees to commit the offences and was motivated by self interest in committing the offences. The Accused was therefore far more culpable than the offender in *Lulu Lim*.

26. Unlike the offender in *Lulu Lim* who had pleaded guilty, the Accused claimed trial and was not entitled to a sentencing discount for a plea of guilt. Thus, a comparison with *Lulu Lim* reinforced the Prosecution's position that the maximum sentence of ten years' imprisonment should be imposed for each of the Accused's cheating offences.

Forgery precedents

27. In relation to the forgery charge (2nd charge), the Prosecution referred to the unreported decision in *PP v Ong Ah Huat* (SC-903927-2020) ("*Ong Ah Huat*"), but submitted that *Ong Ah Huat* was dwarfed by the quantum in the present case.

28. Forged documents were used by the offender in *Ong Ah Huat* to obtain credit from a local branch of China Merchant Bank ("CMB") and seven Hong Kong banks. The credit was used to pay the operating expenses of Coastal Oil

in Singapore as well as those of its sister company in Hong Kong. The total amount of credit facilities issued was USD 79,151,673.31. CMB suffered a loss of USD 10 million (flowing from one of the proceeded cheating charges, which loan was not repaid). The acts of cheating CMB were subject of three proceeded s 420 r/w s 109 Penal Code charges against the offender.

29. The forged documents (such as sales contracts and invoices) concerned sums ranging from USD 3.2 million to USD 18.1 million and were also submitted to Hong Kong banks to obtain financing. The losses incurred by the Hong Kong banks could not be determined. These forged invoices were the subject of nine proceeded charges under s 468 r/w s 109 of the Penal Code against Ong.

30. The offender was sentenced to a global sentence of 108 months' imprisonment (about nine years' imprisonment).

31. For the charges under s 468 Penal Code, the offender in *Ong Ah Huat* was sentenced to the following imprisonment terms which were calibrated based on the amounts stated on the face of the forged documents:

Amounts stated on the face of the forged documents	**Sentence imposed in *Ong Ah Huat***
USD 3 to 6 million	40 months' imprisonment (three years four months' imprisonment)
USD 6 to 9 million	48 months' imprisonment (four years' imprisonment)

USD 9 to 18 million	50 months' imprisonment (four years two months' imprisonment)

32. The Prosecution submitted that in the present case, the CAO forgery charge concerned a far higher quantum of USD 56 million, which was about three times as high as the largest quantum in the charges under s 468 r/w s 109 Penal Code in *Ong Ah Huat*. In addition, while the losses suffered by the Hong Kong banks in *Ong Ah Huat* could not be determined, the evidence in the present case indicated that HSBC suffered losses of about USD 29.6 million from the CAO discounting application. Furthermore, the offender in *Ong Ah Huat* was not the mastermind in the scheme, while the Accused was the mastermind. Finally, the offender in *Ong Ah Huat* was entitled to a sentencing discount for pleading guilty, whereas the Accused had claimed trial.

33. The Prosecution accordingly submitted that the CAO forgery charge was deserving of a far more serious sentence than those imposed for the offences under s 468 r/w 109 of the Penal Code in *Ong Ah Huat*. The Prosecution submitted that that the appropriate sentence would be a sentence of nine years' imprisonment, close to the maximum sentence of ten years' imprisonment.

Consecutive sentences

34. By operation of s 307(1) of the Criminal Procedure Code 2010 ("CPC"), at least two of the sentences imposed on the Accused must run consecutively.

35. The Prosecution submitted that two of the three offences committed by the Accused were related, namely the CAO cheating charge (1st charge) and the CAO forgery charge (2nd charge), as they both related to the CAO discounting application. Thus, the sentence for the Unipec cheating charge (129th charge), as an unrelated offence which related to a different discounting application from the other charges, should run consecutively with 1st or 2nd charge relating to the CAO transaction.

36. As for the sentence to run consecutively with that for Unipec charge (129th charge), the Prosecution submitted that this should be the CAO cheating charge (1st charge), while the sentence for the CAO forgery charge (2nd charge) should run concurrently. The sentence imposed for the CAO cheating charge (1st charge) would better reflect the Accused's criminality in relation to the CAO discounting application than the CAO forgery charge (2nd charge), as instigating the forgery was simply a step towards the Accused's ultimate objective to actually cheat HSBC.

The Accused's old age and medical conditions

37. The Prosecution submitted that the gravity of the Accused's offences and the need for deterrence overshadowed the mitigating value of the Accused's advanced age. The Prosecution submitted that the quanta in the Accused's cheating charges were the highest-ever for a *mastermind* of invoice financing fraud in Singapore. His offences affected the delivery of financial services in Singapore and tarnished Singapore's hard-earned reputation as Asia's leading oil trading hub.

38. In the circumstances, the Prosecution submitted that little (if any) weight should be placed on the Accused's advanced age. However, if the court was minded to accord mitigatory weight to the Accused's advanced age, the Prosecution submitted that a sentencing discount of no more than one year should be applied on a global basis, bringing the sentence to 19 years' imprisonment at the very least.

39. The Prosecuted further submitted that the Accused was currently 82 years' old. With a one-third remission of the sentence, the Accused would be released when he is about 94 to 95 years' old. The courts "have imposed long sentences on elderly offenders before, whereby they would be in their 70s and 80s by the time they were released from prison": see *Lulu Lim* at [60(c)].

40. The Prosecution submitted that this was only the natural consequence of the Accused committing his offences just four years ago when he was already 78 years' old. The Accused had proved himself capable of masterminding serious offences which inflicted multi-million dollar losses on HSBC and which had the potential to destabilize Singapore's banking and oil industries. As such, the Accused had demonstrated that old age was no impediment to serious offending.

41. As for the Accused's medical conditions, the Prosecution noted while the Accused suffered from orthopaedic and neurological conditions, both medical reports tendered by the Defence opined that these conditions did not or may not "directly shorten his lifespan".

42. The Prosecution submitted that there was neither a risk of significant deterioration in the Accused's health or a significant exacerbation of his pain and suffering (*Chew Soo Chun* at [34]).

43. The Prosecution submitted that the issue of deterioration of the Accused's health in prison was a non-starter because it was not even supported by the medical reports.

44. Neither of the medical reports even *asserted* that the respective medical professionals believed or feared that imprisonment would adversely affect the Accused's health, much less any *basis* for such a belief:

a Orthopaedic surgeon Dr Keith Lee Chee Yit ("Dr Lee") candidly states that "[w]here (*sic*) or not [the Accused's] medical conditions are difficult to treat in prison, is a difficult question to answer as [Dr Lee does] not have a thorough knowledge of the medical facilities, or medical personnel available within the prison system".

b Neurologist Dr Tauqeer Ahmad's ("Dr Ahmad") medical report was completely silent on the issue of deterioration.

45. There was thus no basis for believing or fearing that the Accused's health would deteriorate *because of* imprisonment. Rather, the evidence suggested that the Accused's health would naturally deteriorate *regardless* of imprisonment.

46. The Prosecution submitted that the evidence indicated that any deterioration in the Accused's health was unconnected to whether he was imprisoned.

47. The Prosecution also relied on a letter from the Singapore Prisons Service ("SPS") by its Chief Medical Officer Dr Noorul Fatha As'art to address the Medical Reports ("the SPS Letter").

48. Thus, the Prosecution submitted that there was no risk that imprisonment would cause a significant deterioration of the Accused's health, because the medical reports did not evidence such a risk, and the SPS Letter confirmed that no such risk existed.

49. The Prosecution submitted that the concerns raised by Dr Lee and Dr Ahmad relating to whether the Accused's medical condition would be exacerbated had been comprehensively addressed in the SPS Letter, which made it clear that SPS was cognisant of the Accused's "risk of fall due to his age and mobility issues" and that he "may also need a wheelchair". SPS made clear that, in addition to making arrangements to manage the Accused's medical conditions (as summarised at [68] above), a PMO "will also assess [the Accused's] housing requirements and necessary arrangements will be made".

50. SPS had elaborated on two possible arrangements Changi Medical Centre or the Assisted Living Correctional Unit to meet the Accused's housing requirements.

51. The Prosecution submitted that the SPS Letter amply addressed the tentative concerns raised in the Medical Reports. It demonstrated that Dr

Ahmad's key assumption that the Accused will be housed in the "same prison" as a "healthy offender" was wrong. It also showed that SPS would assess the Accused's housing requirements and make the necessary arrangements, thereby addressing Dr Lee's concern that the Accused would need "special considerations" in view of his difficulty with daily life. In particular, the Accused could be housed at the CMC, where nurses would be available to assist him *round the clock*.

52. As SPS had shown that it can address the Accused's medical conditions and his limitations to an acceptable standard, imprisonment would not result in a greater impact on him and no reduction in sentence should be made on account of the Accused's medical condition.

The Accused's mitigation and submission on sentence

53. The Defence submitted that on a totality basis, the Accused should not be sentenced to more than seven years' imprisonment.

Individual sentences sought

54. The Defence submitted for the following individual sentences as a starting point:

Defence's proposed individual sentences			
S/No	**Charge**	**Details**	**Sentences sought**

1	1st charge (DAC-916071-2020) s 420 Penal Code	Concerns the deception and forgery that HLT had entered into a contract with CAO, which induced HSBC into disbursing USD 56,065,852.74 HSBC's unrecovered losses were USD 29,652,677.80	Seven years' imprisonment
2	2nd charge (DAC-919386-2020) s 468 read with s 109 Penal Code		Seven years' imprisonment
3	129th charge (DAC-911858-2021) s 420 Penal Code	Concerns the deception that HLT had entered into a contract with Unipec which induced HSBC into disbursing USD 55,803,699.87 HSBC's outstanding losses were USD 55,681,167.04	Eight years' imprisonment

55. The Defence submitted that while the degree of harm in the present case may have been comparable to the precedent cases that the Prosecution had relied on, the Accused's culpability could not be said to be greater than those of the offenders in those cases.

56. The Defence submitted that even assuming those figures cited by the Prosecution were correct, that did not justify sentences at the maximum prescribed sentence of ten years' imprisonment as the current figures were comparable to the degree of losses seen in the precedent cases cited by the Prosecution where the court *did not* impose the said maximum prescribed sentence.

57. Even if it was assumed that the losses arising from the CAO and Unipec transactions were USD 29,652,677.88 and USD 55,681,167.04 respectively, these amounts would still be significantly less than those arising in relation to the offences in *Lulu Lim*. In *Lulu Lim*, the District Court did not impose the maximum prescribed sentence for those three charges but instead sentenced the offender to seven years' imprisonment for each of those charges.

58. In *Chia Teck Leng*, the High Court did not impose the maximum prescribed sentence (which at the time was seven years' imprisonment) for the 14 offences that the offender had been convicted of. It instead sentenced him to six years' imprisonment for each charge and the court also ascribed weight to the fact that the offender had a further 32 charges taken into consideration.

59. In *Ong Ah Huat*, which involved offences under s 468 Penal Code, the total amount of property involved in the nine charges that the offender was convicted of under that section was around USD 95.94 million, which was higher than the actual pecuniary loss arising from the CAO Discounting Application, i.e. USD 30,718,959.03.

60. Insofar as the individual offences under s 468 Penal Code in *Ong Ah Huat* were concerned, one of those offences involved property in the sum of

USD 18.15 million, for which the court imposed a sentence of four years and two months' imprisonment.

61. Even assuming that the losses arising from the CAO transaction amounted to USD 29,652,677.88, that amount would only be around 1.5 times USD 18.15 million of one of the offences in *Ong Ah Huat*. It therefore could not justify a sentence of nine years' imprisonment being imposed for the 2nd charge in the present case.

62. The Defence also submitted that one had to account for inflation since 2004 when *Chia Teck Leng* was decided, and applying the MAS inflationary calculator, the amounts in *Chia Teck Leng* in terms of today's figures would amount to USD 133.1 million and the uncovered losses stood at USD 93.5 million.

63. The Defence submitted that while the offences in this case affected the delivery of financial services in Singapore, it did not warrant the prescribed maximum sentence for each individual charge. While the victims in *Chia Teck Leng*, *Lulu Lim* and *Ong Ah Huat* were all financial institutions, the prescribed statutory maximum sentence was not was not imposed for any of the individual offences in those cases.

64. The Defence submitted that there was no basis for a finding that the offences in this case undermined public confidence in Singapore's oil trading industry. It was hard to understand how the offences could be said to have potentially threatened the public's confidence in the oil industry when the relevant government agencies themselves came to the view in the Joint Statement that there had been "[n]o serious impact on [the] oil trading and

bunkering sectors" and there was no need for the banks to "de-risk". The Defence submitted that the Prosecution had not presented any evidence that the banks did in fact de-risk or did so indiscriminately from the bunkering and oil trading sectors due to the offences.

65. In any case, the Defence contended that it was difficult to see how the Joint Statement had any relevance in this case as there was no evidence that it concerned the offences that the Accused has been convicted of as the police report for the current offence was only filed on the evening of 21 April 2020. The Joint Statement issued on 21 April 2020 was instead made "in response to media reports" concerning "developments related to HLT and the broader oil trading and bunkering sectors" and was released even before the CAD had commenced investigations into the two Discounting Applications.

66. As was publicly reported, both Ocean Bunkering Services ("OBS") and Hin Leong Marine International ("HLM") which were subsidiaries of HLT, had since gone into liquidation. The Defence submitted that the Joint Statement may well have been in relation to the issues that OBS and HLM were facing in or around April 2020.

67. The Defence submitted that even if the Accused had initiated the offences and directed his employees to participate in them, his culpability could not be said to be higher than those of the offenders in the precedent cases (*Lulu Lim*, *Chia Teck Leng* or *Ong Ah Huat*) cited by the Prosecution.

68. Unlike the present case, where the offences were said to have been committed against the same financial institution on two occasions just four days apart, the offenders in *Lulu Lim*, *Chia Teck Leng* and *Ong Ah Huat*

engaged in persistent and habitual offending by perpetrating multiple frauds on several financial institutions over a period of years. the means and methods by which the offences were committed were far more complex, and the offenders took active steps to mask their offences.

69. The Defence submitted that there was far less premeditation and planning in this case than in the precedent cases cited by the Prosecution. It was also not correct that the Accused offended out of self-interest or that the offences were hard to detect.

70. In convicting the Accused of the three charges, the Defence pointed out that this court had observed that the Accused confirmed that "the two transactions were for HLT's benefit" the Prosecution itself contended that the offences were committed "to stave off the margin calls" that HLT faced at the time and "ensure its survival". As such, the Accused could not have offended out of self-interest.

71. Whether the Accused raised defences which had the effect of implicating HLT employees such as Serene Seng was not probative to the question whether he had a motive of personally benefitting from the offences at the time he is said to have committed them.

72. As for whether the offences were difficult to detect, the Defence submitted that HSBC did not face any difficulty in detecting the offences because it was the Accused himself who made arrangements for HLT to disclose to HSBC that there were no contracts underpinning the CAO and Unipec Discounting Applications.

73. The Defence submitted that it was not in dispute that the Accused arranged for the call with HSBC on 12 April 2020 where HLT informed HSBC that there were no underlying transactions in relation to the two Discounting Applications.

74. There was no suggestion that any of the offenders in *Lulu Lim*, *Chia Teck Leng* or *Ong Ah Huat*, on their own accord, disclosed the fact that there were no underlying transactions in relation to the applications for financing that had been submitted to the relevant financial institutions.

75. The Defence submitted that even assuming that the Accused had arranged the call with HSBC on 12 April 2020 on account of a realisation that HLT would be unable to arrange full repayment of the funds disbursed for the CAO and Unipec transactions, that did not mean that he was not motivated by remorse. In this regard, the Accused had "apologised" to HSBC during the call and told HSBC that HLT "would like to make repayment for the sums".

76. The Defence submitted that there are no charges taken into consideration in the present case which would warrant any kind of uplift being applied to the individual sentences for each of the charges that the Accused has been convicted of. This stood in sharp contrast to *Lulu Lim*, *Chia Teck Leng* and *Ong Ah Huat*, where the Court took into consideration multiple further offences in fashioning the sentences that were imposed on them.

77. The Defence submitted that the longest individual sentences imposed in the precedents cited by the Prosecution (in relation to the three charges involving amounts ranging from USD 69,946,924.12 to USD 100,000,000 in

Lulu Lim) which involved losses that were significantly higher than those seen in this case, was seven years' imprisonment.

78. As such, the premeditation and planning, and the difficulty of the offences being detected in those cases were of a much higher degree.

79. When the relevant offence-specific and offender-specific factors in this case are compared, in the round, with those in the precedent cases cited by the Prosecution, the Defence submitted that there was no basis for the individual imprisonment sentences for each of the charges to exceed eight years' imprisonment.

80. The Defence submitted that there was partial restitution in this case as HSBC set off a total of USD 26,350,094.08 from HLT's HSBC bank account as a partial repayment of the sums that HSBC disbursed pursuant to the CAO Discounting Application.

81. The Defence submitted that restitution, regardless of whether it evinced remorse, carried significance in the way of mitigation especially in cases where the accused never intended to benefit personally as it indicated that the economic harm that the victim has suffered, has been reduced, see *Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 ("Gan Chai Bee") at [63].

82. Accordingly, the restitution of USD 25,346,893.71 that was made in relation to the CAO Discounting Application ought to be reflected in the lengths of the imprisonment terms that were imposed in relation to the 1st and 2nd charges involving the CAO transactions such that the individual sentences for each would be seven years' imprisonment.

Sentences on a totality basis

83. Referencing the first limb of the totality principle, the Defence submitted that the Prosecution submission for a global sentence of 20 years' imprisonment was "substantially above the normal level of sentences for the most serious of the individual offences committed".

84. The Defence submitted that on the basis of the first limb of the totality principle, the Accused should not be sentenced to more than 11 years' imprisonment. Taking the proposed sentence of eight years' imprisonment for the 129th charge for the Unipec transaction as the "normal level" of sentences as a yardstick, an aggregate sentence of more than eleven years' imprisonment was not supportable on any view.

85. The Defence highlighted that the present case involved three offences committed on two occasions in the space of just four days. It could not be more different from the cases that the Prosecution were relying on to justify its call for a 20-year aggregate sentence such as *Chia Teck Leng* and *Lulu Lim* which took place over a much longer period of time, in terms of years.

86. Turning to the second limb of the totality principle, Defence submitted that the Accused's old age and his medical condition warranted a further reduction in the total sentence.

87. The Defence submitted that where a person of mature age has committed a first offence, some credit might be given for the fact that he has passed most of his life with a clean record and the prospects for rehabilitation

may also be taken to be better, relying on *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 ("*Yap Ah Lai*") at [89].

88. As the Accused was 82 years of age, an imprisonment sentence of 20 years that the Prosecution has asked for would mean that, even with a one third remission, he would be about 95 years of age when he is released from prison. That would effectively amount to a life sentence. Further, the imprisonment sentence that the Prosecution sought for would be disproportionate and crushing to the Accused in light of his poor health, which continued to deteriorate.

89. Dr Lee had stated in his medical report that the Accused suffered from anxiety, depression and insomnia, enlarged prostate with chronic bladder outlet obstruction, asthma, coronary artery disease, cerebrovascular disease with cognitive impairment, sensory neural hearing loss, degenerative inter-vertebral disc disease, osteoarthritis of the knees and severe peripheral neuropathy.

90. The Accused had complained of chronic spine pain and progressive weakness in his limbs.

91. Dr Lee stated that the Accused experienced weakness and numbness in his upper limbs, which affected his left hand more than his right hand. As a result, he had difficulty with fine motor control and was unable to control chopsticks well or handle buttons and his signature is inconsistent. Further, the Accused was mostly wheelchair bound and due to weakness and numbness in his lower limbs, he needed assistance getting into, and out of, a chair or bed, and was unable to walk independently. He felt unstable and would fall if he tried to walk by himself. He was able to use a walking frame to ambulate slowly

for a maximum of 20 metres and even then, had fallen several times at home in recent years.

92. According to Dr Lee, the Accused required assistance in all his basic and instrumental activities of daily living. These included dressing, getting into or out of a bed or chair, taking a bath or shower and using the toilet.

93. Dr Lee opined that the Accused had a loss of fine motor control in both his upper limbs, which could be attributed to the severe peripheral neuropathy. The Accused was at a high risk of falls based on his level of muscle wasting and weakness in lower limbs and poor coordination.

94. Dr Lee stated that the Accused's severe muscle atrophy and weakness has already set in and was permanent. His muscles would continue to atrophy and weaken further as a result of continuing nerve compression, peripheral neuropathy and advancing age, which would likely lead the Accused to having progressive functional decline with increased reliance on others for his daily living. The Accused required supportive care and regular physiotherapy to stretch and exercise weakened muscles to slow the progressive decline in muscle strength and reduce the development of joint contractures.

95. In relation to the living conditions and protocols within the prison, Dr Lee said that he was not familiar with them but was of the view that the Accused would definitely have more difficulty with his daily life compared to a fully able-bodied young person and special considerations would need to be made in view of that.

96. Dr Ahmad confirmed that the Accused was at a high risk of fall and fracture to his hip bone and spine and needs assistance for his activities of daily

living. Dr Ahmad has also recommended that the Accused be treated in an institutional facility (preferably, a hospital) with multi-disciplinary support together with daily physiotherapy, a dietitian and occupational therapy support to improve and stabilise the Accused's condition from deteriorating further. Dr Ahmad has said that otherwise there was an imminent threat of fall and fracture which can shorten the Accused's lifespan.

97. Dr Ahmad said that the Accused wheelchair bound, unable to move around, dependent on his caregiver for his activities of daily living and these limitations would make him suffer more in comparison to a healthy offender in the same prison.

98. The Defence accordingly submitted that there was a clear risk that the Accused would experience a significant deterioration in health and a significant exacerbation of pain and suffering as a result of any term of incarceration that is imposed on him. He would thereby suffer a greater and disproportional impact on account of such a term of incarceration, compared with an ordinary offender who does not suffer from the medical conditions that have beset him.

99. The Defence submitted that when the Accused's advanced age and ill health were taken into account for the purposes of the second limb of the totality principle, that aggregate imprisonment term ought to be reduced further.

100. The Defence accordingly sought a further reduction of four years' imprisonment from the aggregate sentence of 11 years' imprisonment which was a reduction of 36% and smaller than the 45% reduction which See JC (as

he then was) applied in *D'Rozario Pancratius Joseph v Public Prosecutor* [2015] SGHC 46 ("*D'Rozario Pancratius Joseph"*).

101. The Defence accordingly submitted that the Accused ought to be sentenced to a total sentence of not more than seven years' imprisonment in this case.

The Court's decision on sentence

Sentence for the cheating charges

102. While there is presently no specific sentencing framework prescribed by the appeal courts for cheating offences under s 420 Penal Code, I agree with the Prosecution and Defence that the offence-specific sentencing factors for s 420 Penal Code cheating offences can usefully be grouped under the broad rubric of harm and culpability followed by offender-specific factors in assessing the appropriate sentence in this case.

Factors relating to harm

103. I consider the following factors relating to harm:

a) The amount of monies cheated, and the losses caused to HSBC;
b) Whether the Accused's offences affected Singapore's financial services and economic infrastructure; and
c) Whether the Accused's offences could have potentially undermine public confidence in Singapore's oil industry.

104. With regard to the monies cheated, this stood at USD 55 to 56 million per charge and amounted to USD 111 million dollars and the losses amounted

to USD 85,333,844.92 in total for both cheating charges. The losses comprised USD 29,652,677.88 for the CAO transaction (after factoring in the sums that were subsequently set off from HLT's HSBC bank account and the discount fee) and USD 55,681,167.04 for the Unipec transaction (after factoring in the discount fee).

105. These figures were staggeringly large sums of monies relative to other cheating cases which have come before our courts. By way of comparison, even if we accounted for inflation since 2004 in *Chia Teck Leng* as urged by the Defence, the amounts stood at USD 133.1m and the uncovered losses stood at USD 93.5m in terms of today's money and the amounts in the individual proceed charges was between USD 1 to 30 million dollars. In *Lulu Lim*, the figures stood at USD 586.5m and losses stood at USD 461.1m and the amounts in the individual proceeded charges was between USD 11 to 100 million dollars.

106. In the circumstances, the sums involved in the present case certainly stood at the top tier of cheating cases in terms of amounts involved.

107. I next consider whether the Accused's offences affected Singapore's financial services and economic infrastructure.

108. In this regard, there is ample authority for the proposition that offences that entails the misuse of a financial instrument or facility which threatened the conduct of legitimate commerce must attract deterrent sentences. This would cover a wide range of scenarios, from the misuse of a credit card for retail purchases to trade financing fraud as in the present case.

109. In *Law Aik Meng* VK Rajah J (as he then was) held at [24(e)].

> The present case affords a classic and illuminating illustration of such an offence. The public interest vested in a secure and reliable financial system that facilitates convenient commercial transactions is extraordinary, especially in light of Singapore's reputation as an internationally respected financial, commercial and investment hub. Yet another instance of such an offence surfaced in the recent case of *PP v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 ("*Payagala*"), where the appellant made fraudulent purchases with a misappropriated credit card. In imposing a deterrent sentence, I made the following observations at [88]:
>
> **... Such offences, if left unchecked, would be akin to a slow drip of a subtle but potent poison that will inexorably and irremediably damage Singapore's standing both as a financial hub as well as a preferred centre of commerce. ...**
> **The courts will take an uncompromising stance in meting out severe sentences to offences in this category**.
>
> [Emphasis added]

110. In *Idya* Menon CJ held that where an offence entails the misuse of a financial instrument or facility which threatened the conduct of legitimate commerce, the need for general deterrence was likely to take centre stage.

111. In *Chia Teck Leng* Tay J (as he then was) held at [42]:

> Crimes such as the present case strike at the heart of banking and commerce. They erode the open halls of trust and erect the high walls of suspicion. They lead to ever more stringent checks by banks on

> honest businesses with the attendant impact in terms of time and cost.

112. A deterrent sentence is warranted to prevent offences from pervading Singapore's financial ecosystem, which may lead to banks imposing stricter rules of compliance or withdrawing their trade financing services entirely: see *Sim Chon Ang Jason* at [64].

113. As the Accused's offences affected Singapore's financial services, a deterrent sentence is warranted.

114. As for whether the Accused's offences had the potential to undermine public confidence in the oil industry, to the extent that the present case involved trade financing fraud in the oil industry, I agree with the Prosecution that it did have the *potential* to do so specifically in the oil trading sector. I elaborate.

115. In *Toh Suat Leng Jennifer v Public Prosecutor* [2022] 5 SLR 1075 ("*Toh Suat Leng Jennifer'*) Hoong J considered that the offender committed the offences in her capacity as an insurance agent in the employ of prominent institutions in the insurance industry and held at [64]:

> **Here, the appellant committed the s 468 offences in her capacity as an insurance agent in the employ of either AIA or HSBC, which were prominent institutions. These offences have the potential to adversely affect public confidence in the insurance industry.** I also accept that such incidents of offending may result in increased efforts and costs on the part of the insurance industry as it seeks to enhance security measures to prevent the recurrence of similar scams.
> [Emphasis added]

116. In *Lim Teck Chye v Public Prosecutor* [2004] 2 SLR (R) 525 ("*Lim Teck Chye"*) Yong CJ agreed with the District Judge that the offender's actions had the potential to adversely affect public confidence in the independence of marine surveyors and Singapore's bunkering industry; and that his actions were particularly reprehensible given that the offender was a prominent member of the bunkering industry at [68]:

> I was of the view that the corrupt actions of the appellant, although in the context of the private sector, had a negative bearing upon the public service rationale. **As the district judge found, the appellant's actions had the potential to adversely affect public confidence in the independence of marine surveyors and Singapore's bunkering industry. His actions were particularly reprehensible given that the appellant was a prominent member of the bunkering industry.**

[Emphasis added]

117. Significantly, the opening paragraph of the Joint Statement stated as follows:

> ln response to media reports, Enterprise Singapore (ESG), the Maritime and Port Authority of Singapore (MPA) and the Monetary Authority of Singapore (MAS) confirmed that **the agencies are closely monitoring developments related to Hin Leong Trading Pte Ltd and the broader oil trading and bunkering sectors.**
>
> [Emphasis added]

118. The Joint Statement sought to assure that industry that *at the time of issuance* on 21 April 2020 there had been no serious impact on the oil trading and bunkering sectors and that Singapore's banking system remained sound. Nonetheless, the Monetary Authority of Singapore had to remind banks not to "de-risk indiscriminately from the bunkering and oil trading sectors."

119. The fact that the Joint Statement was issued illustrated that point that the bunkering and oil trading sectors in Singapore were important sectors such that there was a need to provide assurance to the sector by the government agencies in the Joint Statement. The Defence's assertions that there was no potential impact on the oil trading sectors may possibly be supported if the police investigations into HLT had commenced *before* the issuance of the Joint Statement and the Joint Statement referenced these investigations and concluded that there was no impact or cause for concern but that was not the case here.

120. As noted by Hoong J in *Toh Suat Leng Jennifer* incidents of offending by an employee of a prominent player in the industry may result in increased efforts and costs on the part of the affected industry as it sought to enhance security measures to prevent the recurrence of the offence. In this regard, the Joint Statement cautioned banks against de-risking indiscriminately but did advise the banks to continue to apply judicious credit assessment in individual borrowers to manage their risks.

121. In *Lim Teck Chye* Yong CJ held that the offender's actions had the potential to adversely affect public confidence in the independence of marine surveyors and Singapore's bunkering industry given that the offender was a prominent member of the bunkering industry.

122. In my judgment, the Accused's offences would have the potential to impact the bunkering and oil trading sector as HLT was one of the largest players in the industry and the offences involved trade financing fraud by HLT of financial institutions in oil trading.

123. This can be distinguished from *Goldring, Timothy Nicholas v Public Prosecutor and other appeals* [2015] SGHC 158 as relied on by the Defence where Tay J (as he then was) noted at [92] that the claims of public disquiet and effect on public confidence asserted by the Prosecution in various news articles were premised on the total investment amount. This presumed some criminality or impropriety in the entire investment *including the amounts which were not the subject of any charge*. At the same time, Tay J held that it would be fair nevertheless to say that there *must have been some disquiet* among the investors in the charges in issue.

124. In the present case, the Prosecution is relying only on the offences for which the Accused had been convicted which could potentially impact public confidence in the oil trading industry. There was no reliance by the Prosecution on acts outside of the three charges for which the Accused had been convicted of.

125. In the circumstances, I am satisfied that the Accused's offences could potentially undermine public confidence in the oil trading sector.

Factors relating to culpability

126. I consider the following factors as relevant to culpability:

a) The role of the Accused;

b) The motive for the offending by the Accused;

c) Whether there was premeditation and planning and the duration of offending;

d) Whether the offences were difficult to detect;

e) Whether the set off by HSBC for the losses in the CAO transaction should be taken into account.

127. The Accused was the founder and only managing director of HLT from its inception on 25 July 1973 until 17 April 2020 when he stepped down. His two children, Lim Huey Ching and Lim Chee Meng were the only two other Directors of HLT and were appointed on 1 September 1992 and 16 November 1992 respectively. As the managing director of HLT he instigated and directed his employees to commit the offences. This can be contrasted with *Lulu Lim*, where the offender acted on the instructions of a mastermind Ng Say Pek who was the founder of the company and her boss.

128. That said, the Accused's motive for committing the offences was not for personal greed but to improve HLT's cash flow situation and to stave off margin calls. In *Lulu Lim*, one of the reasons which the District Court gave at [42(b)] for not imposing the maximum sentence for each individual cheating charge was that the offender did not do so out of personal greed but to keep the victim company afloat and its employees in employment. It also appeared that the District Court in *Lulu Lim* at [37(a)(ii)] *did not* consider the offender's plea of guilt as affording her a sentencing discount given that she had absconded:

> Further, I note that shortly after CAD raided AIPL's premises on 15 January 2020 at 10.03 am, the Accused left Singapore on 16 January 2020 at 12:02 am. She did not respond to CAD's multiple attempts to contact her. The Accused had to be arrested by the United Arab

> Emirates ("UAE") authorities and was returned to Singapore only on 17 September 2021. The fact that the Accused had absconded from Singapore is an aggravating factor: *Lin Lifen v Public Prosecutor* [2016] 1 SLR 287 at [50]; *Public Prosecutor v Leong Soon Kheong* [2009] 4 SLR(R) 63 at [50]. She had displayed a lack of remorse, wasted precious resources that had to be expended to locate her and to bring her back to Singapore, and caused justice to be delayed by 20 months. **The Accused's act of absconding undercut the mitigating value of her guilty plea.**
>
> [Emphasis added]

129. The District Court in *Lulu Lim* proceeded to contrast it with *Chia Teck Leng* at [40(d)]:

> Another significant difference between the two cases is the degree of remorse shown by the offenders. **When his offences came to light, the offender in *Chia Teck Leng* had cooperated with the authorities and had helped to recover 30% of the cheated funds. The Accused did not do likewise. Instead, she absconded from Singapore. During the 20 months when the Accused remained at large, the authorities and her victims had to piece together what had happened and pick up the pieces.**
>
> [Emphasis added]

130. While it may be said that the Accused was the majority shareholder in HLT and could potentially benefit from the commission of the offences, the fact is the Accused did not profit personally from the offences but committed the offences to stave off margin calls and improve the cash flow situation of HLT by increasing its working capital. In *Chew Soo Chun* the High Court held at [70] that the fact that the offender was a major shareholder in the company

and stood to gain when the company gains "cannot be automatically equated with an intention to gain personally":

> We acknowledge that the DJ made a finding that the Offender committed the offences for personal gain. The reasoning of the DJ in making this finding is that the Offender was a major (*ie*, 38.77%) shareholder in the Company and he would stand to gain when the Company gains. Another reason is that the Offender drew a salary (*ie*, $10,000 per month in 2005) from the Company; in this sense his fortunes were tied to that of the Company. But this finding is valid only up to a point. **There is, of course, no question that the Offender's rescue efforts could potentially benefit himself as a shareholder and an employee of the Company. This situation, however, cannot be automatically equated with an intention to gain personally.** In *Tan Thiam Wee*, the offender owned the entire shareholding of the company. He too defrauded a bank to ameliorate a tough financial situation. Yet the court in *Tan Thiam Wee* did not consider the offender to have intended to gain personally; it considered that the offender's "motivation was to stave off what he thought was temporary insolvency so that his company could survive and his employees could remain in their jobs". **This was, the court added, "vastly different from [the situation] where the perpetrator commits an offence for direct financial gain or to repay gambling debts":** at [13]. The position of the Offender here is, at the very worst, similar to that; indeed bearing in mind that the Offender only owned 38.77% of the shares in the Company, a company listed on the NSX, **it will be even harder to suggest that what he did was directly for personal gain.**
>
> [Emphasis added]

131. *Chew Soo Chun* referred to the case of *Tan Thiam Wee v Public Prosecutor* [2012] 4 SLR 141 ("*Tan Thiam Wee*"). In *Tan Thiam Wee*, the

offender managed a company that had a factoring agreement with a bank where the bank provided advances to the company of up to 85% of the face value of the invoices that the company submitted to the bank. He was convicted of several charges under s 420 Penal Code for submitting false invoices to the bank to obtain cash advances when the company was facing liquidity problems.

132. In reducing the offender's sentence on appeal, Lee J observed at [16] the level of culpability of the offender in *Tan Thiam Wee* must be lower than cases where the offender deceives the bank into disbursing loans with complete disregard of whether he will be in the position to repay the loans:

> In light of the sentences in the two cases considered above, the total of five years' imprisonment imposed by the court below is manifestly excessive considering that in those cases the offences were committed out of greed whereas the appellant had committed the offence out of a desire to keep his company afloat and his employees in employment combined with misplaced optimism of an economic turnaround. The court below had failed to appreciate that the degree of malicious intent in the present case was much lower than in the two cases cited above. Furthermore, the transactions reflected in the invoices were not entirely fictional. The level of risk undertaken by the bank is arguably higher than the secured loan cases, given that Tan only had an expectation of payment and not concrete realisable assets; however, **the level of culpability must be lower than cases where the offender deceives the bank into disbursing loans with complete disregard of whether he will be in the position to repay the loans.**
>
> [Emphasis added]

133. In my view, the consideration of the Accused's motive should be at the time the offence was committed in 2020, and not referenced with respect to the conduct of his defence at trial where according to the Prosecution, he "threw his employees under the bus". As such, the manner in which he conducted his defence at trial by implicating his employees did not automatically mean that he committed the offences without a care for his employees. That said, the evidence did not reveal a specific motive on the Accused's part to save the jobs of the employees of HLT but rather to improve its cash flow and unlike *Tan Thiam Wee* the transactions in the invoices in the present case were entirely fictional. Further, when the matter was surfaced to HSBC, the Accused attributed this to a miscommunication and mistake on the employees' part in HLT. As such, I find that the level of the Accused's culpability here was not as low as that in *Tan Thiam Wee.*

134. There was premeditation and planning on the Accused's part as the offences were committed to improve HLT's cashflow and stave off margin calls. The Accused had given his employees the details of the forged documents which were then created for the purposes of cheating which deceived HSBC into believing that there were actual transactions with CAO and Unipec.

135. I agree with the Prosecution that the present offences were difficult to detect as banks and financial institutions had to rely on the information provided by the applicant in financing applications as such information is often uniquely within the latter's knowledge, such as the details of the transaction for which financing is sought, taken with the difficulty of verifying such information via other means. As these were silent discounting transactions, the buyers, namely CAO and Unipec, would not have been informed of the discounting transaction. For the trade financing system to work efficiently,

financial institutions such as HSBC should be able to assume that the documents submitted for discounting were genuine and should not need to investigate if they were in fact forgeries.

136. The Defence submitted the duration of offending was very short, namely four days between the two cheating offences whereas the offenders in *Chia Teck Leng* and *Lulu Lim*, the duration of offending was sustained in terms of years.

137. In my judgment, while a long duration of offending may be an aggravating factor (such as in *Chia Teck Leng* and *Lulu Lim* whereby the offences were committed over an extended period of time) a short duration of offending is a neutral factor and cannot be a mitigating factor in itself. In other words, the fact that the offences were committed a matter of days apart was not an aggravating factor but neither was it mitigating.

138. Having considered the other offence specific factors some of which was present here and not in the other cases (for example the Accused was the mastermind here whereas the offender in *Lulu Lim* was not), I was of the view that a sentence *close to the maximum* was warranted, and the starting point should be nine years' six months' imprisonment for each of the cheating charges involving the CAO and Unipec transaction.

139. While I accept what was held by Yong CJ in *Sim Gek Yong v Public Prosecutor* [1995] SGHC 27 at [13] that the maximum sentence need not be imposed only in the "worst imaginable case" and could be imposed for a range of conduct which characterises the most serious instances of the offence in question, I did not agree with the Prosecution that the maximum sentence for the individual cheating charges in the present case was warranted, mainly on

account of the fact that the Accused did not commit the offences out of personal greed in light of the decisions of *Tan Thiam Wee* and *Chew Soon Chun* which held that such a motivation was less culpable than an offence committed out of personal greed. I should add that the maximum sentence for individual offences was similarly not imposed in *Chia Teck Leng* and *Lulu Lim*.

140. I next consider whether the reporting of the matter to HSBC on 12 April 2020 and the offer to HSBC offset the losses for the CAO transaction (which was eventually offset) should be mitigating.

141. In my judgement, the Accused only reported the matter when he realised that HLT would not have been able to repay HSBC for the discounted transactions. This type of reporting was clearly not an act of remorse, admission of guilt on the Accused's part as the Accused has never admitted to the offences and the Accused continues to maintain this position at trial.

142. That said, in *Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 ("*Gan Chai Bee*") Menon CJ held at [63]:

> **However, restitution is not necessarily limited in its significance to being evidence of remorse. In my judgment, it may also indicate that the economic harm that the victim has suffered has been reduced, and indeed, substantially reduced if full restitution was made**. In such a case, it would not be completely eliminated because at the time of the offence, the victim would have been made to part with something of value, and after that, would have remained worse off until he received recompense. **But the fact that what the victim lost has now been restored to him may, in my judgment, bear on the sentence imposed on the offender who caused the loss**. **This would be especially relevant in cases such as the**

> **present where the offender before the sentencing court was never intended to benefit personally, and where one of the principal metrics of culpability is the harm caused to the victim for the benefit of another party who in fact has substantially diminished that harm by making restitution.** Moreover, giving significance to the impact of restitution, regardless of whose remorse it evidences, incentivises all offenders involved in a dishonest scheme to restore the loss suffered by the victim if they are able, which in turn promotes for the victim a form of restorative justice.
>
> [Emphasis added]

143. It was noted in *Gan Chai Bee* at [69] that as a result of the restitution the substantial value involved in the offences was of largely attenuated significance to the offender's sentencing.

144. In the present case, the amount of USD 56,065,852.74 was significantly reduced to USD 29,652,677.80 after the set off with HLT's HSBC bank account, a reduction of about 47% of the original amount.

145. In the circumstances, I am of the view that the final loss to HSBC can be taken into account in calibrating the individual sentences, even if the reduction by way of set-off for the CAO transaction was not by way of remorse, as the economic harm that HSBC has suffered had been reduced in relation to the CAO transaction but not to the extent of a case where restitution was made of remorse and admission to the offences.

146. The individual sentence for the CAO cheating charge is accordingly reduced by six months to nine years' imprisonment.

147. There is no adjustment for the Unipec cheating charge as there was no reduction in the losses to Unipec and the sentence remains at nine years six months' imprisonment.

148. There is no further adjustment for other offender specific factors as the Accused had not pleaded guilty, has no antecedents and does not have any TIC charges which would be relevant to sentencing.

Sentence for the forgery charge

149. The Prosecution referred to *PP v Ong Ah Huat* (SC-903927-2020) ("*Ong Ah Huat*").

150. In *Ong Ah Huat* the offender used forged documents to obtain credit from a local branch of China Merchant Bank ("CMB") and seven Hong Kong banks. The credit was used to pay the operating expenses of Coastal Oil in Singapore as well as those of its sister company in Hong Kong. The total amount of credit facilities issued was USD 79,151,673.31. CMB suffered a loss of USD 10 million (flowing from one of the proceeded cheating charges, which loan was not repaid). The acts of cheating CMB were subject of three proceeded s 420 r/w s 109 Penal Code charges against the offender.

151. Forged documents (such as sales contracts and invoices) concerning sums ranging from USD 3.2 million to USD 18.1 million were also submitted to Hong Kong banks to obtain financing. The losses incurred by the Hong Kong banks could not be determined. These forged invoices were the subject of nine proceeded charges under s 468 r/w s 109 Penal Code against the offender.

152. The offender pleaded guilty to the abovementioned charges, as well as three money laundering charges under s 44(1)(a) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA"). He also consented to six charges under s 420 of the Penal Code, 35 charges under s 468 of the Penal Code and two charges under s 44(1)(a) of the CDSA being taken into consideration for sentencing.

153. The offender received a global sentence of 108 months' imprisonment (about nine years' imprisonment).

154. As *Ong Ah Huat* was an unreported decision, it is well established that a sentencing court should approach such unreported precedents with caution as it may not be possible to discern what had weighed on the mind of the sentencing judge in those cases, see *PP v Mahadi bin Muhamad Mukhtar* [2022] SGHC 217 per Hoong J at [7] and *Janardana Jayasankarr* at [13(b)].

155. Given that the forgery charge was committed in furtherance of the cheating charge in the CAO transaction and the maximum sentence for each offence was the same, I was of the view that the sentence for the forgery charge could be pegged to the sentence of the cheating charge for the CAO transaction.

156. In the circumstances, the starting individual sentence for the forgery charge is nine years' imprisonment.

Consecutive sentences and totality

Consecutive sentences

157. Section 307(1) CPC provides that where there were three or more distinct offences for which the Accused has been sentenced to imprisonment

(as in the present case), at least two sentences of imprisonment are to be consecutive. Menon CJ explained the operation of s 307(1) CPC and consecutive sentences in *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [52]:

> The general rule of consecutive sentences for unrelated offences does not contravene s 307(1) or render it otiose. The provision retains its relevance in that it operates regardless of whether the multiple offences are related or otherwise. Therefore, even if all or some of the offences are related, s 307(1) applies to require that at least two sentences should run consecutively. Indeed, in my judgment, s 307(1) of the CPC, the one transaction rule, and the general rule of consecutive sentences for unrelated offences should be regarded as complementary principles that collectively help a court decide how sentences should be ordered to run in relation to a multiple offender.

158. In the present case, it could be said that the forgery and cheating charge involving the CAO transaction were related and part of the same transaction as the forgery charge was committed for the purposes of cheating HSBC to obtain discounting for the CAO transaction. Conversely, the cheating charge involving the Unipec transaction was a different transaction from the forgery and cheating charge involving the CAO transaction as it involved another counterparty.

159. As such, the sentence in the cheating charge involving the Unipec transaction should run consecutively with either the forgery charge or the cheating charge involving the CAO transaction.

160. In this regard, I agree with the Prosecution's submission that sentences for both cheating charges should run consecutively as the sentence imposed for

the CAO cheating charge would better reflect the Accused's criminality in relation to the CAO discounting application than the CAO forgery charge, as the Accused's instigating the forgery was simply a step towards the Accused's objective to cheat HSBC in the CAO cheating charge.

161. I next considered the aggregate sentence which is subject to the totality principle.

162. The totality principle comprises two limbs:

a) First limb. Whether the aggregate sentence was substantially above the normal level of sentences for the most serious of the individual offences committed

b) Second limb. Whether the effect of the sentence on the offender was crushing and not in keeping with his past record and future prospects.

First Limb of the totality principle

163. In *Navaseelan Balasingam v Public Prosecutor* [2007] 1 SLR (R) 767 Tay J (as he then was) held at [27]:

> **With respect, in a case like the present, where there are multiple charges, the district judge ought not to be unduly wary of the maximum provided for the "most serious offence" (which would be ten years' imprisonment but for which the district judge could only sentence up to seven years for the reasons stated earlier), because there are at least five such offences here. In other words, the maximum punishment in this case is not ten years'**

imprisonment but five times ten years' imprisonment, even without taking into consideration the theft charges. Pursuant to s 18 of the CPC (see [25] above), at least two of the sentences must be consecutive. With the enhanced sentencing jurisdiction of the district judge provided in s 17 of the CPC (reproduced at [33] below), the maximum possible sentence that he could impose in this case is therefore 14 years' imprisonment. **It would be wrong, for instance, for the High Court to be wary of sentencing an offender who has raped three victims beyond the maximum of 20 years' imprisonment provided for one offence of rape (under s 376 of the Penal Code).** Such a view accords with the position taken by the Court of Appeal in *Kanagasuntharam v PP* ([12] *supra*) (involving one charge of rape with hurt, one charge of fellatio and one charge of anal intercourse) which noted (at [17]):

Although the total term achieved by this combination was 22 years, which was in excess of the 20-year maximum term prescribed by s 376(2) for the charge of aggravated rape, the most serious charge, this could not be said to be wrong in principle in view of what we have said above of the relation between s 18 of the CPC and the totality principle.

[Emphasis added]

164. In *Law Aik Meng* VK Rajah J (as he then was) held at [58] to [59]:

Admittedly, the cumulative sentence of 12 years' imprisonment I have prescribed exceeds the maximum sentence tier for the most serious of the individual offences involved (s 4 read with s 10 of the CMA) in the present case. Be that as it may, a sentence merely two years in excess of the ten-year upper limit for a s 10 CMA charge cannot be considered excessive. **More importantly, it must be borne in mind that such a definition of the totality principle should not be rigidly and blindly**

> **applied to *all* cases. Rather, it must be invoked sensibly. The totality principle guides the court in sentencing an offender guilty of more than one offence, ensuring that the total sentence remains proportionate to the gravity of the context.** There is a suggestion in *V Murugesan* ([55] *supra*) that the aggregate sentence can be measured against the maximum sentence for the most serious of the offences the accused has been convicted of, *unless* the offender is a persistent offender **or alternatively, if the maximum sentence seems *too short to reflect the gravity of the appellant's total conduct***.
>
> ….
>
> **Indeed, when *Navaseelan*'s appeal ([54] *supra*) was heard, Tay J was of the view that the district judge erred when he appeared unduly constrained by the totality principle and unduly attentive to the maximum sentence provided for the "most serious offence" (which would be ten years' imprisonment but for which the district judge could only sentence up to seven years because of s 11(3) of the CPC): [54] *supra* at [28].** As a consequence the district judge settled on an aggregate sentence of five and a half years' imprisonment in assessing the permutation of consecutive sentences. **Tay J opined that this aggregate sentence imposed by the district judge did not reflect the severity of the offences in question and was indeed manifestly inadequate in the circumstances**. He therefore enhanced the sentence by altering the permutation of the consecutive sentences, ordering that *all* the sentences for the CMA charges were to run consecutively. This resulted in a total sentence of eight and a half years' imprisonment (including the sentence for the theft charges).
>
> [Emphasis added]

165. In the circumstances, I am of the view that the maximum sentence provided for the "most serious offence" should not be viewed as capping the total aggregate sentence when two sentences are required by law to run

consecutively by operation of s 307(1) CPC, nor should the individual sentence for a cheating charge be used as the benchmark for which to measure the amount of uplift, as what the Defence had urged with respect to the eight year imprisonment term for the Unipec cheating charge. Further, the sentences in this case which are to run consecutively are for unrelated offences, namely the CAO and Unipec transactions.

166. Indeed, there were no such reductions by the court in *Chia Teck Leng* and *Lulu Lim* on account of the first limb of the totality principle.

167. As such, given that the CAO and Unipec cheating charges involved unrelated transactions and on the basis of the aggregate sentence needing to reflect the gravity of the conduct, I did not agree that the Defence the aggregate sentence should not be more than 11 years' imprisonment on the basis of the first limb of the totality principle.

Second limb of the totality principle

168. As for whether old age is a mitigating factor to reduce the overall length of the sentence, in *Public Prosecutor v UI* [2008] SGCA 35 ("*UI*") the Court of Appeal held at [78] that generally old age *was not a mitigating factor* except where the sentence effectively amounts to a life sentence which would then be crushing under the second limb of the totality principle:

> In this regard, we would add that, in general, the mature age of the offender does not warrant a moderation of the punishment to be meted out (see Krishan Chand v PP [1995] 1 SLR(R) 737 at [8]). But, where the sentence is a long term of imprisonment, the offender's age is a relevant factor as, unless the Legislature has prescribed a life sentence for the offence, the court should not impose a sentence that effectively

> amounts to a life sentence. Such a sentence would be regarded as crushing and would breach the totality principle of sentencing. In the present case, the Respondent will, with remission for good behaviour, be released at an age that should give him some time to spend with his family and to fulfil his wish to make amends to the Victim.

169. In *Yap Ah Lai* Menon CJ provided further insights into this exception in *UI* that generally old age was not a mitigating factor at [87] to [88]:

> I agree and indeed I am bound by this decision [in *UI*]. The passage, however, needs to be unpacked in order to extract the underlying principle. **In my judgment, the key emphasis placed by the Court of Appeal was on whether, in all the circumstances of the case, the sentence may be regarded as crushing because of the fact that the aged offender has an abbreviated expectation of his life prospects**. This is not a principle limited in its application to cases where the sentence "is a long term of imprisonment" so that the sentence "effectively amounts to a life sentence".
>
> The Court of Appeal was clearly raising one example where it would be proper to have regard to the offender's age. However, I do not regard that as excluding consideration of an offender's mature age where a substantial period of imprisonment is under consideration. **The key consideration is to assess the *impact* of such a sentence on the offender having regard to his past record and his future life expectation and consider whether this would be disproportionate and crushing because of the offender's particular circumstances.**
>
> [Emphasis added]

170. In *Public Prosecutor v Ewe Pang Kooi* [2019] SGHC 166 ("*Ewe Pang Kooi (HC)"*) the High Court in sentencing the offender, adjusted the aggregate

sentence from 28 years' imprisonment downwards to 310 months' (25.8 years) imprisonment after taking into account the advanced age of the offender and the overall length of the sentence. The High Court made the following observations at [38] to [40]:

> **Considering the individual sentences alongside the aggravating and mitigating factors discussed above, an aggregate sentence of 28 years appears in keeping with the overall criminality of the accused.**
>
> **However, I take note that the accused, who is presently 65 years old, is of a relatively advanced age in light of the long sentence which he faces. Here, the totality principle mandates that where the sentence is a long term of imprisonment and where the offender is of an advanced age, the court ought not to impose a sentence that effectively amounts to a life sentence, unless the Legislature has prescribed a life sentence to the offence (*Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [78]; see also *Yap Ah Lai* at [91]–[92]).** Section 409 of the PC allows the court to impose life imprisonment as the sentence.
>
> Nonetheless, given that the accused had also fully cooperated with the authorities and is remorseful for his acts, imposing a life imprisonment term will be excessive in my view. In this regard, I note that the Prosecution, who has submitted for a sentence in the region of 30 years' imprisonment, [note: 10] is also not asking for a life imprisonment term. **In the circumstances, to avoid giving a sentence that is tantamount to a life imprisonment term, I order the sentences for the 24th, 47th and 50th charges to run consecutively, with the result that the aggregate sentence is 310 months (25.8 years) imprisonment.** The 24th, 47th and 50th charges are selected as they represent the charges with the largest sum in each of the three different capacities in which the accused had

> misappropriated money from his clients, *viz*, as liquidator, manager and receiver respectively.
> [Emphasis added]

171. The High Court's sentence *Ewe Pang Kooi (HC)* was upheld on appeal in *Ewe Pang Kooi v Public Prosecutor* [2020] SGCA 13 and the Court of Appeal held at [10]:

> **It was next suggested that the aggregate sentence should be adjusted downwards because, in effect, it could amount to a life sentence given the Appellant's advanced age and this would be crushing. We do not accept this. First, the Judge took into account the advanced age of the Appellant and moderated the sentence as a result.** In our judgment, while it is right that a sentencing court should be mindful of the real effect of a sentence on an offender of advanced age, as noted in *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [78], **there are limits to this principle. Here, this was simply a consequence of the period of time during which the Appellant was able to keep his fraudulent activities concealed. As we pointed out in the course of the arguments, it would be perverse to suggest that if he had successfully continued with the fraud for another decade and been apprehended at the age of 70, the sentence should be further moderated on account of his remaining life expectancy at that point.**
>
> [Emphasis added]

172. *Ewe Pang Kooi v Public Prosecutor* [2023] 3 SLR 1736 was an appeal to the High Court which related to a separate set of offences from *Ewe Pang Kooi (HC)* for which the offender pleaded guilty after he was sentenced for the offences in *Ewe Pang Kooi (HC).* The issue was whether the imprisonment sentence in those proceedings were to commence after the expiry of the

sentence imposed in *Ewe Pang Kooi (HC)*. In upholding the sentencing court's order for the sentence to commence after the expiry of the sentence in *Ewe Pang Kooi (HC)*, Hoong J made the following observations at [62]

> **Second, the gravity of the appellant's offences and the principles of general and specific deterrence must certainly operate to override the mitigating value of his advanced age**. As the Prosecution points out, the appellant committed 183 forgery offences, 236 ODA offences, 222 CDSA offences and two cheating offences, in addition to 50 CBT Offences for which he has already been sentenced. Furthermore, as recognised by the Court of Appeal when affirming the High Court sentence (see *Ewe Pang Kooi (CA)* at [10]), **the appellant's advanced age at the time of sentencing was simply due to his success in keeping his fraudulent activities concealed for a significant period of time. It would therefore be perverse if the appellant could now rely on his advanced age for any further moderation of his sentence.**
>
> [Emphasis added]

173. In *Yap Ah Lai* Menon CJ stated at [93] that there were limits to the principle that age warranted a moderation in the sentence:

> **However, there are necessarily limits to the principle. Otherwise, it could always be argued that an older offender must be sentenced to a shorter term of imprisonment than a younger counterpart. This is plainly not correct**. **As noted by the Court of Appeal in *PP v UI* there is no *general* principle that age alone would "warrant a moderation of the punishment to be meted out".** The limitation is found in the requirement that the impact of the sentence must be so severe as to be disproportionate or crushing. **Within this limit, the sentencing court should examine the particular circumstances of the individual offender to see if, *in those circumstances and those***

> ***circumstances only*, a given period of imprisonment should be moderated.** As noted above, this will not be lightly found but the sentencing judge should apply his mind to this consideration.
>
> [Emphasis added]

174. On the authority of *Ewe Pang Kooi (HC)*, given the Accused's current age of 82 years old and considering the long aggregate sentence to be imposed in this case, but balancing this against the gravity of the offences, the need for deterrence for the offences committed and the fact that he was still able to commit the offences when he was already 78 years old, I make a slight adjustment of the individual sentences downwards by reducing the sentence for each of the three charges by six months' imprisonment to eight years six months' imprisonment each for the 1st cheating charge and 2nd charge and nine years' imprisonment for the 129th cheating charge. This would effectively be an aggregate reduction of one year's imprisonment on account of the Accused's old age, given that two out of three imprisonment terms would run consecutively.

The effect of the Accused's medical condition

175. Both the Prosecution and Defence agreed that the Accused's medical condition as a ground for the exercise of judicial mercy was not relevant here.

176. Rather, the Defence sought to rely on the Accused's medical condition as a mitigating factor. In this regard, the Defence has tendered two medical reports pertaining to the Accused's medical conditions.

177. In *Chew Soo Chun* the High Court held at [36] that ill health could be a mitigating factor where the offender faced far greater suffering than the usual hardship in serving a term of imprisonment, for example, because of a risk of significant deterioration in health, or a significant exacerbation of pain and suffering (at [34]), and whether it reveals a real likelihood of disproportionate impact on the offender that warrants a sentencing discount.

178. At the same time, ill health would be irrelevant if the consequences would transpire whether the offender was in or outside of prison: *Chew Soon Chun* at [39] and [39(b)]:

> In all other cases, ill health is irrelevant to sentencing. It may be that the offender has a condition or several conditions, but unless he can satisfy the tests for exercising judicial mercy or for mitigating a sentence because of disproportionate suffering or decreased culpability, there is no proper basis to vary the sentence. **Hence, it will be insufficient for an offender to merely show that he is ill.**
>
> ….
>
> **Conditions that carry only the normal and inevitable consequences in the prison setting. If the consequences will transpire independently of whether the offender is in or outside of prison or the risk of them transpiring is not significantly enhanced by the imprisonment, then they are also a neutral factor as imprisonment would make no difference to the offender's state of health or the suffering he will sustain in prison.**
>
> [Emphasis added]

179. The issue is therefore not the number of medical ailments which the Accused is suffering from but whether the consequences of his medical condition would transpire whether he was in or outside of prison. If the

consequences of his medical condition would transpire *even if* he was outside of prison, then no adjustment should be made to the sentence.

180. In this regard, Dr Lee opined that "with time, [the Accused's] muscle would continue to atrophy and weaken further as a result of continuing nerve compression, peripheral neuropathy and also advancing age". Dr Lee further opined that the Accused's orthopaedic issues were likely to be "permanent and irreversible" and that "[a]s [the Accused]'s condition deteriorates, he may become fully dependent on a caregiver".

181. As for whether the Accused's medical conditions were difficult to treat in prison. Dr Lee stated that it was a difficult question to answer as he did not have a thorough knowledge of the medical facilities in prison and this would better be addressed by a doctor who has worked withing the prisons systems and with a thorough knowledge of the medical capabilities there.

182. Dr Ahmad stated that the Accused had severe peripheral neuropathy, cervical/lumbar disc disease and with very poor proprioception resulting in poor balance and at high risk of recurrent fall/fracture resulting him being wheelchair bound, unable to move around and dependant on a care giver. These limitations would make him suffer more in comparison to a health offender in the same position. That said, Dr Ahmad's opinion was on the basis that the Accused would be housed *in the same facilities* as a healthy prisoner.

183. In this regard, I agree with the Prosecution's submission that Dr Lee's medical report suggests that the Accused's health will naturally deteriorate *regardless* of imprisonment. As for Dr Ahmad's opinion, I considered whether

the prison had the facilities to be able to address the Accused's medical conditions.

184. In *Chew Soo Chun* the High Court at [39(a)] made clear that the offender's ill health would be irrelevant when it can be addressed by surgery or treatment, and where the prison has the capability to address the conditions to an acceptable standard, which need not be the best medical standard.

185. In this regard, SPS has reviewed Dr Lee and Dr Ahmad's reports that he has chronic nerve compression and peripheral neuropathy secondary to spinal degeneration. His orthopaedic issues had also resulted in muscle atrophy in his lower limbs with resulting mobility issues (inability to squat, difficulty in standing/walking for long periods). If the Accused were to be admitted, he will be assessed by SPS's Prison Medical Officer ("PMO") and the necessary follow-up appointments with the public healthcare institutions (PHIs) will be scheduled, to ensure continuity of care during his incarceration.

186. SPS had noted that the Accused was at risk of falls due to his age and mobility issues and may also need a wheelchair. The PMO will assess his housing requirements and necessary arrangements will be made.

187. SPS has elaborated on two possible arrangements to meet the Accused's housing requirements:

a) Changi Medical Centre ("CMC"): CMC is equipped with a range of medical equipment and facilities. There are nurses on duty throughout the day (24 hours, seven days a week) in the CMC and

a PMO on duty during office hours. There is an on-call doctor after hours. Inmates housed in CMC will have beds.

b) Assisted Living Correctional Unit ("ACLU"): The ALCUs are correctional units which have various features that make it safer for inmates who require some degree of mobility assistance, such as grab bars near the toilet area, non-slip flooring and beds (similar to those in the CMC).

188. In my view, SPS's response on the specific housing facilities does take into account and cater to the Accused's medical conditions and this means that it has the capability to address the Accused's medical conditions to an acceptable standard, even if may not be the best medical standard, in accordance with the High Court's guidance in *Chew Soon Chun* at [39(a)]. It would address Dr Lee's concern that the Accused would need "special considerations" in view of his difficulty with daily life as the Accused could be housed at the CMC, where nurses would be available to assist him throughout the day, 24 hours, seven days a week.

189. The Defence has relied on *D'Rozario Pancratius Joseph* where the High Court made a reduction of the offender's sentence on account of his medical condition. On appeal, the High Court in *D'Rozario Pancratius Joseph* held at [28] that "any imprisonment term of some length is likely to cause him considerable hardship" and that his "health continues to deteriorate". In my view, that was a fact-specific decision although it does appear that SPS's response in *D'Rozario Pancratius Joseph* appeared to be more generic by simply stating that they should be able to manage the offender's medical condition if he was imprisoned or in the alternative, he would be seen at one of

the restructured hospitals as required (see the decision of the District Court in *Public Prosecutor v D'Rozario Pancratius Joseph* [2014] SGDC 287 at [108]).

190. Further, I note that *D'Rozario Pancratius Joseph* was decided before *Chew Soo Chun* and the court in *D'Rozario Pancratius Joseph* did not have the benefit of considering the matter in light of the relevant principles as set out in *Chew Soo Chun*.

191. This is unlike the present case where SPS has reviewed the medical reports of the Accused's doctors and has elaborated on how it could specifically manage the Accused's medical condition with housing facilities such as CMC or ACLU.

192. In the circumstances, I am of the view that no further reduction should be made on account of the Accused's medical condition.

Comparison of aggregate sentence with precedent cases

193. Finally, I set out the sentences of the present case compared to C*hia Teck Leng* and *Lulu Lim* with the relevant sentencing factors.

	The Accused	***Chia Teck Leng***	***Lulu Lim***
Pleaded guilty/ Claim trial	Claimed trial	Pleaded guilty	Pleaded guilty
Antecedents	Untraced	Untraced	Untraced
Proceeded charges	2 x 420 Penal Code 1 x 468 Penal Code	8 x s 420 Penal Code 6 x s 467 Penal Code	11 x s 420 Penal Code 1 x s 477A Penal Code

Charges taken into consideration	N.A.	10 x s 420 Penal Code 5 x s 467 Penal Code 3 x s 468 Penal Code 4 x s 408 Penal Code 8 x s 465/471 Penal Code 2 x 47(1)(a) Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act	20 x s 420 Penal Code 1 x s 417 Penal Code 1 x s 417 r/w s 511 Penal Code 3 x s 477A Penal Code
Amount cheated (per proceeded charge)	Between USD 55 to 56 million per charge	Between USD 1 to 30 million	Between USD 11 to 100 million
Amount cheated overall	USD 111.68 million	SGD $117.1 million (including TIC charges) USD $133.1 million (adjusted for inflation)	USD 586.5 million (including TIC charges)
Restitution / Recovery	USD 26.35 million	SGD $34.8 million (mixture of seizure by CAD and voluntary restitution)	USD 119.4 million
Unrecovered loss	USD 85.33 million	SGD $82.3 million USD $93.5 (adjusted for inflation)	USD 467.1 million
Duration of offending	Four days	Four years	Three years
Number of victims	One bank	Four banks	16 banks and financial institutions
Role of Accused	Mastermind, instructed employees to commit offences	Operated alone	Committed offences on instructions of mastermind
Use of proceeds	For company's cashflow	$62 million lost in casinos	For company's cashflow

Individual sentences	S 420 Penal Code (1st charge): Nine years' imprisonment S 420 Penal Code (129th charge): Nine years six months' imprisonment S 468 Penal Code (2nd charge): Nine years' imprisonment (Two consecutive sentences)	s 420 Penal Code : Six years' imprisonment per charge (Note: maximum sentence was seven years' imprisonment at the time) s 467 Penal Code : Six years' imprisonment per charge (Seven consecutive sentences)	s 420 Penal Code : Five to seven years' imprisonment per charge (Three consecutive) S 477A Penal Code : Five years' imprisonment per charge (Concurrent)
Adjustment on a totality basis	Yes, on account of old age. A total of one year's imprisonment reduction on the aggregate sentence S 420 PC 1st charge: Eight years six month's imprisonment Imprisonment S 420 PC 129th charge: Nine years' imprisonment	No adjustment	No adjustment

	S 468 PC: Eight years six month's imprisonment (Two consecutive sentences)		
Aggregate sentence	Global:17 years six months' imprisonment	Global: 42 years' imprisonment	Global: 20 years' imprisonment

194. While there are some sentencing factors more aggravating in *Chia Teck Leng* and *Lulu Lim* as opposed to the Accused, such as a longer duration of offending, the presence of TIC charges, the motive for offending *Chia Teck Leng* being for greed and gambling or the larger amounts (including *Chia Teck Leng* if inflation is accounted for), there are also sentencing factors operating against the Accused when compared to *Lulu Lim*. For example, he did not plead guilty (although this did not appear to factor much in *Lulu Lim* as she had absconded) and was the mastermind. In my judgment and in the round, an aggregate sentence of 17 years six months' imprisonment accords with the criminality of the Accused's offences and is not crushing.

Conclusion

195. In the circumstances, the sentence I impose on the Accused is as follows:

SN	Offence	Details	Sentence

1.	1st charge (DAC-916071-2020) s 420 Penal Code	Concerns the deception and forgery that HLT had entered into a contract with CAO, which induced HSBC into disbursing USD 56,065,852.74 to HLT. HSBC's unrecovered losses were USD 29,652,677.80	**Eight years and six months' imprisonment (consecutive)**
2.	2nd charge (DAC-919386-2020) s 468 read with s 109 Penal Code		Eight years and six months' imprisonment (concurrent)
3.	129th charge (DAC-911858-2021) s 420 Penal Code	Concerns the deception that HLT had entered into a contract with Unipec which induced HSBC into disbursing USD 55,803,699.87 to HLT. HSBC's outstanding losses were USD 55,681,167.04	**Nine years' imprisonment (consecutive)**
			Global: 17 years and six months' imprisonment

Toh Han Li

Principal District Judge

DPP Christopher Ong, Kelvin Chong, Foo Shi Hao and Tan Pei Wei (Attorney-General's Chambers) for the Prosecution

Mr Davinder Singh S.C., Navin Thevar, Srruthi Ilankathir and Shilpa Krishnan (Davinder Singh Chambers LLC) for the Accused