

**Public Prosecutor v Tan Poh Choon**  
**[2006] SGDC 10**

**Case Number** : DAC 19964/2005, 19965/2005, 20942/2005, 20945/2005, 22003/2005, 22004/2005, 22019/2005, 22947/2005, 22951/2005, 22953/2005, MA 155/2005

**Decision Date** : 26 January 2006

**Tribunal/Court** : District Court

**Coram** : Toh Yung Cheong

**Counsel Name(s)** : Derek Kang (Deputy Public Prosecutor) for the Prosecution; Subhas Anandan and Adrian Wee (Harry Elias Partnership) for the accused

**Parties** : Public Prosecutor — Tan Poh Choon

*Criminal Law – Offences – Property – Cheating – Ponzi scheme – Accused inducing persons to invest with his company by promising them high profits – Investors' moneys allegedly invested in "Private Placement Programs" – Accused's company having no revenue other than moneys paid to it by investors, and no record of investment returns – Whether accused engaging in conspiracy to cheat persons into investing with his company by promising them high profits from fictitious sources, knowing that promises not true – Whether accused committing offence as principal offender – Whether accused having intention to cheat – Sentence – Section 420 Penal Code (Cap 224, 1985 Rev Ed)*

26 January 2006

*Judgment reserved.*

**District Judge Toh Yung Cheong**

1. The accused claimed trial to ten charges under section 420 read with section 109 of the Penal Code. For ease of reference, one of the charges which the accused claimed trial to is reproduced below:

DAC 19964/05 (Exhibit P3B)

You, Tan Poh Choon, are charged that you, between September 2004 and May 2005, in Singapore, whilst a Director of Ginsystem Inc, a company incorporated in the British Virgin Islands, did engage with one Thiam Meng Hwa, the Chief Financial Officer of Ginsystem Inc, and others unknown, in a conspiracy to do a certain thing, namely, to cheat and pursuant to that conspiracy and in order to the doing of that thing, an act took place sometime around January 2005, in Singapore, to wit, it was represented by Ginsystem Inc to one Teo Kim Tian that if he invested a minimum of US\$450 in Ginsystem Inc's 'Dynamic 2% Program'. Ginsystem Inc would invest the funds on his behalf and give him a profit of 2% per trading day, which fact you knew was not true, and by such manner of deception, the said Teo Kim Tian was dishonestly induced to deliver a sum of US\$450 to Ginsystem Inc, and you have thereby committed an offence punishable under Section 109 read with Section 420 of the Penal Code, Chapter 224.

2. The nine other charges were similarly framed except that they referred to different investors. At the conclusion of the trial, I convicted the accused on an amended charge under section 420 of the Penal Code and delivered an oral judgment outlining the reasons for my decision. As the accused has appealed against his conviction, I am setting out my reasons together with a summary of the evidence in this case.

## **Background**

3. On 17 December 2004, the Commercial Affairs Department (CAD) received an e-mail stating that there was a ponzi scheme starting operations in Singapore. A ponzi scheme is a scam where investors are promised high profits from fictitious sources and early investors are paid off with funds raised from later investors.

4. The CAD commenced inquiries into a company known as Ginsystem Inc. Ginsystem Inc had a website located at [www.ginsystem.com](http://www.ginsystem.com) which promoted an on-line investment scheme called the "Dynamic 2% Program" which offered investors a return of 2% per trading day which roughly equates to a return of about 480% per annum. In order to generate such high returns, the website claimed that Ginsystem would put money into a variety of investments, chief among them being "Private Placement Programs" or PPPs. As a result of CAD's investigations, the accused, who was the investment director of Ginsystem Inc, was arrested in May 2005 and charged with the present offences.

## **Prosecution's case**

### ***Evidence of PW5 John Loke Chye Huat***

5. PW5 John Loke is a forensic accountant with the CAD. In June 2005, he was tasked to go through the documents seized from Ginsystem and to put up a report. John Loke looked at the documents pertaining to the investment scheme, the ledger books and the bank statements of Ginsystem.

6. In his report (exhibit P72), John Loke made two significant findings. The first finding was that after calculating the amounts that investors put into Ginsystem (US\$3.05 million) and comparing them with the money in Ginsystems' bank accounts, he found that US\$1,150,065 could not be accounted for.

7. His second significant finding was that between December 2004 and June 2005, there were no records of any return on investment and that investors withdrew a total of US\$351,425 during this period. Therefore, despite the promise of 2% returns per trading day, Ginsystem did not appear to have any revenue stream other than the money of investors. In the absence of any return on investment, this implied that investors who withdrew their money had their profits paid out of the money of the other investors.

### ***Evidence of the four Ginsystem Directors***

8. The prosecution called four witnesses who involved in Ginsystem's operations and also directors of the Singapore company Ginsystem Pte Ltd to describe its origins and operations. These four persons were PW10 Daniel Lim Siak Peow ("Daniel Lim"), PW11 Muhammad Hisham bin Muslim ("Hisham"), PW12 Doanna Neville ("Doanna") and PW15 Danny Tan Song Huat ("Danny Tan").

### ***The first meeting***

9. Sometime around October and November 2004, Ernest Thiam arranged a meeting at his Suntec Tower Office. Apart from Ernest, Doanna, Danny Tan, Daniel Lim and Hisham bin Muslim were present. The accused was not in the picture at this stage.

10. At this meeting, Ernest Thiam told everyone that he wanted to copy a business model from an on-line investment program known as PIPS. PIPS was promoting an on-line investment programme that offered investors 2% returns per trading day.

11. When Ernest was asked how it was possible to pay returns of 2% per trading day, Ernest Thiam told them that he had a Malaysian friend known as Dr Tan (i.e. the accused) who knew of a program called a 'Private Placement Program' or PPP that could generate high returns.

12. Ernest Thiam then assigned those present to do certain tasks. Danny Tan was put in charge of the contents of the website while Daniel Lim was to draw up a list of frequently asked questions. Hisham was to assist in IT matters and Doanna was assigned to take charge of the members' back office.

13. Subsequently, there were several meetings at Ernest's Suntec Tower office and the results of their work were set to Ernest Thiam for his approval in early December 2004. Around that time, Danny Tan and Peter Burton came up with name of the business. The business was to be known as "Global Investment Network System" or Ginsystem. Around that time, Ernest Thiam engaged NewMedia Express Pte Ltd to design and build a website for Ginsystem with the address [www.ginsystem.com](http://www.ginsystem.com).

14. Sometime in late November or December 2004, Ernest Thiam introduced the accused to Doanna, Daniel Lim and Hisham during a meeting held at the Suntec Tower office. The accused informed them about PPPs and the high returns they could generate. Doanna recalled the accused mentioning that the returns would exceed the 2% per day they were planning to pay investors while Hisham recalled the accused mentioning that the returns would be between 20% to 40% per week <sup>[note: 1]</sup>.

#### *Origin of Ginsystem Inc*

15. Sometime in September 2004, Ernest Thiam contacted Allens & Bryans Consultants with a view to acquiring a 'ready made' offshore company. Ernest purchased a shell company called Double Treasure International Services Ltd which was incorporated in the British Virgin Islands. Ernest Thiam was made the sole Director and shareholder.

16. Subsequently, in December 2004, Ernest Thiam and Danny Tan contacts Allens & Bryans to acquire another 'ready made' company. The company they purchased this time was Cymbals Enterprises Ltd which came with an existing US dollar bank account with the Standard Chartered Bank of Hong Kong. Danny Tan and the accused were appointed as Directors while the sole shareholder was Double Treasure. The name of the company was immediately changed from Cymbals to Ginsystem Inc. The company had a paid up capital of one US dollar.

17. According to Andy Pe (PW1), a manager with Allen & Bryans Consultants, clients such as Ernest Thiam would not be accepted if they were engaged in fund management or investment advisory activities or any finance related activities. Ernest Thiam and Danny Tan signed a declaration to this effect and represented that the company would be used to provide IT and internet services. On 13 June 2005, Danny Tan called Allen & Bryans with a view to renewing Ginsystem Inc's registration with the British Virgin Islands' authorities. Allens & Bryans informed him that there were some complications and it was contemplating action against Ginsystem Inc for misleading Allen & Bryans about the company's activities. <sup>[note: 2]</sup>

#### *Origin of Ginsystem Pte Ltd*

18. Ernest told Danny Tan that he had arranged for the registration of a Singapore company which was to be called Ginsystem Pte Ltd. On 27 December 2004, Danny Tan, Doanna, Daniel Lim and Hisham met at the office of a Company Secretary at Fook Hai building and signed documents which made the four of them directors of Ginsystem Pte Ltd.

#### *Operations*

19. Ginsystem Pte Ltd initially acted as a customer service support centre which responded to phone and e-mail queries from investors. Subsequently, Ginsystem Sdn Bhd was incorporated in Malaysia in January 2005 with Danny Tan, the accused, and one Ruby Yong as directors. In February 2005, customer service support operations were moved to Malaysia and handled by Ginsystem Sdn Bhd. <sup>[note: 3]</sup>

20. As early as 27 December 2004, Ginsystem Inc had already commenced accepting funds from investors via wire transfers and e-payment processors. The monies were eventually deposited in Ginsystem Inc's Standard Chartered Bank (Hong Kong) account.

21. On 8 January 2005, Ginsystem Inc organised a seminar at the Marriot Hotel in Singapore. The accused and Peter Burton, the CEO of Ginsystem Inc, gave presentations. I will deal with what the accused said during the seminar in more detail later.

22. On 10 May 2005, the CAD raided the office of Ginsystem Pte Ltd and seized documents and computers and subsequently froze the bank account of Ginsystem Pte Ltd.

### ***Evidence of the 10 investors***

23. The 10 investors who were named in the charges were called as witnesses. They invested varying amounts of money in Ginsystem via electronic payment gateways accessed through the website or by interbank telegraphic transfers.. According to their evidence, they were attracted by the claim that Ginsystem was able to deliver a return of 2% per trading day on their investment though they were aware that the return was not guaranteed and that losses were possible. All of them accessed Ginsystem's website and read about how their funds would be placed into Private Placement Programmes ("PPPs"). In addition, some of the investors had also attended a seminar which Ginsystems organised at Marriott Hotel. During this seminar, Peter Burton and the accused gave presentations. They also expressed a desire for their money to be placed in genuine and legitimate investments.

24. None of the 10 investors had any complaints against Ginsystem at the time of the trial. In fact, one of the investors PW4 Soh Kian Giap withdrew his investment and made a profit of about \$200 [note: 4].

### ***Evidence of PW19 Andrew Kwek***

25. Andrew Kwek is the Executive Director of the Investment Management Association of Singapore. In essence, his evidence was that he had never heard of an investment which could deliver 2% per trading day and that if one checked the internet, one would find warnings that such investments could be fraudulent.

26. He also pointed out that where margin or leveraged trading was concerned, there would inevitably be a need for collateral. If losses occurred, the collateral would need to be topped up.

27. His evidence was not disputed by the defence except that it was pointed out that he was not an expert on PPPs.

### **Close of prosecution's case and amendment of charge**

28. The defence made a submission of no case to answer at the close of the prosecution's case which consisted of two main arguments:

a) There was no evidence showing that the accused had conspired with Ernest Thiam as alleged in the charge. In fact, none of the Ginsystem employees could shed any light on this alleged conspiracy.

b) None of the investors named in the charges said that they felt cheated.

29. At the close of the prosecution's case, the court is only required to determine whether there was prima facie evidence, which if accepted as accurate, would establish each essential element of the alleged offence: **Haw Tua Tau v PP** [1981] 2 MLJ 49. The same test applies where the evidence is circumstantial. The question in such a case is what inferences could be *reasonably* drawn from the primary facts: **PP v Oh Laye Koh** [1994] 2 SLR 385.

30. First, I was of the view that there was prima facie evidence to support a charge of cheating. Various statements were made to Ginsystem investors which led them to invest money with Ginsystem. One factor which induced the investors to invest with Ginsystem was the claim that Ginsystem had access to PPPs which could generate high returns. There was evidence that the accused, the investment director, was a self-professed expert on PPPs in Ginsystem and had even given a presentation to investors on how PPPs worked. After Ginsystem had been operating for 6 months and had taken US\$3.05 million from investors during this period, the CAD accountant could not find any evidence of a return on investment and the profits given to investors who withdrew their investment during that period came from the money of other investors.

31. Second, even though the evidence of a conspiracy was circumstantial, having regard to the evidence that Ernest Thiam of the person in charge of Ginsystem and had recruited the accused for his supposed expertise in PPPs, I was of the view that it could be reasonably be inferred that Ernest Thiam and the accused were part of a conspiracy to commit an offence of cheating.

32. The original charge stated that Ginsystem had represented to investors that they would be paid 2% per day. However, the investors in court all stated that they were aware that the returns were not guaranteed. In the circumstances, the prosecution invited the court to make an amendment to the charges to reflect the evidence of the investors. I agreed and amended the relevant portion of the charges to read:

“... it was represented by Ginsystem Inc to one (name of investor) that if he invested a minimum of US\$450 in Ginsystem Inc’s ‘Dynamic 2% Program’, Ginsystem Inc would invest the funds on his behalf in a Private Placement Program or a Private Placement Fund Program or another legitimate investment...”

33. I called for the defence on the amended charges and the accused elected to give evidence.

## **Defence**

### ***Evidence of the accused***

34. Before joining Ginsystem, the accused had been a director of various publicly listed Malaysian companies such as Kuantan Flour Mill Bhd, Peristima Bhd and Arusmurni Corporation Bhd. Arusmurni was a finance company involved in shares and futures trading, however, the accused was not directly involved in securities trading.

35. In 1996, he resigned from his last appointment and set up his own company, South China Sea International Alliance Incorporated (“SCS”). The accused claimed that SCS could be listed in NASDAQ, an American stock exchange. However, SCS was actually an empty shell company and the accused wanted to use SCS to acquire companies so that SCS could be listed on NASDAQ <sup>[note: 5]</sup>.

36. The accused first heard about Private Placement Programmes or PPPs in 1997 through a friend known as Fauzi. According to Fauzi, if the accused invested money, he would get back twice or triple the amount invested. The invested money would be pooled together and a trader would trade using this money and all of them would share the profit together <sup>[note: 6]</sup>. The accused gave US\$150,000 to Fauzi and got back US\$450,000 over 6 months. Subsequently, Fauzi asked the accused to invest US\$500,000 but the accused declined to do so as the money would be invested in Fauzi’s name and it was a big amount.

37. The accused’s next involvement in PPPs was in 2003. The accused’s friend, Lee Pak Choy, introduced him to one Hsieh Po Chung from Taiwan. Lee informed the accused that Hsieh had a US\$50 million available for a PPP. The accused went to see a lawyer known as Sarbjit as the latter had a contact for a PPP. Armed with this contact for a PPP, the accused acted as an intermediary for Hsieh and was paid US\$300,000 for his efforts <sup>[note: 7]</sup>.

38. The next PPP that the accused invested with was through a facilitator known as Tony Li. Tony Li told the accused to come up with US\$100,000 for an investment with one Alfred Lai Fook Choy. The expected returns were three times the initial investment over 10 to 12 months. However, Alfred Lai was not able to deliver the returns and the accused lodged a police report against him.

39. Before the accused joined Ginsystem, his understanding of PPPs was straightforward:

Q: What was your understanding as to how a trader in a PPP makes money? Your understanding before Ginsystem.

A: They would trade whatever is possible to generate the income to pay the investor [note: 8].

40. The accused was introduced to Ernest Thiam in 2003. In 2004, Ernest asked the accused whether he could use the accused's office in Malaysia for his business dealings in Malaysia and the accused agreed. The accused did not charge Ernest rent.

41. Around November 2004, Ernest asked the accused about PPPs and the accused gave Ernest one of his contacts called Felicia. Another point that came up was that PPPs were very safe as the money would remain in their own account. Ernest informed the accused that he was going to set up a company to make some planned investments and he needed a revenue stream like a PPP in order to have the income for his planned investments [note: 9]. At that time, the accused claimed he did not know what sort of business Ernest was planning to do.

42. On a subsequent occasion, Ernest asked the accused to become the Investment Director of Ginsystem Inc. The accused would not receive a salary but would receive 30% of the profits after deducting all the costs. His duty as investment director was to secure PPPs for Ginsystem Inc.

43. As to the source of the money for the PPPs, the accused was only informed after he was appointed a Director of Ginsystem Inc on 27 December 2004. Though a main feature of Ginsystem Inc was its promise of 2% returns per trading day, the accused claimed he only found out about this when he made his presentation at the Ginsystem seminar at the Marriott Hotel in January 2005.

44. After joining Ginsystem, the accused detailed how he made several attempts to secure PPPs for Ginsystem but for various reasons, they were unsuccessful. I will deal with these PPPs in details later.

45. The only investment which Ginsystem made appeared to be in a KTV lounge in Madagascar. This was initiated by Ernest Thiam and the accused could not shed light on the details such as how much was invested. There was also no documentation which reflected Ginsystem's shareholding or investment in the lounge.

### **My decision**

46. I have already found that the prosecution had made out a prima facie case, which if accepted, would establish the essential ingredients of the offence. To recap, Ginsystem had made an extravagant claim of being able to generate 2% returns per trading day by investing in instruments such as PPPs. However, Ginsystem collected US\$3.05 million from investors and did not invest any of it into PPPs but instead was paying the profits of investors who withdrew their money out of the money of other investors.

47. Set against this was the defence explanation that there was no intention to cheat as all along, the accused believed that PPPs were risk-free investments able to deliver huge returns. Furthermore, he had genuinely intended to invest in PPPs but was prevented from doing so by factors beyond his control. Bearing in mind that the defence need only raise a reasonable doubt in the prosecution's case, I will now analyse the evidence.

### **Abetment by Conspiracy**

48. The first issue I will deal with is whether or not there was a conspiracy to cheat. The essential ingredients of the offence of abetment by conspiracy are well settled and were outlined by the Court of Appeal in **Chua Kian Kok v PP [1999] 2 SLR 542**:

- a) The accused must engage, with one or more other persons in a conspiracy
- b) The conspiracy must be for the doing of the thing abetted; and,
- c) An act or illegal omission must take place in pursuance of the conspiracy in order to the doing of that thing.

49. In the context of the present case, the prosecution must prove that there was a conspiracy to cheat Ginsystem investors by falsely representing to them that their money would be invested in legitimate investments including PPPs that had the ability or potential to yield at least 2% returns per trading day.

50. The charge also alleges that the accused had conspired with Ernest Thiam. Therefore, the prosecution has to prove that Ernest Thiam has participated in the conspiracy. The prosecution relied on the following pieces of evidence:

- a) Danny Tan gave evidence that he had heard from Ernest that fund managers had told the latter that achieving 2% returns per day was not possible.
- b) Danny Tan gave evidence that Ernest had been doing his own research on PPPs. If so, Ernest would have realised from his research that PPPs were unworkable and fraudulent investments.
- c) Nevertheless, after consulting the accused, Ernest seemed to believe in the viability of such PPP investments, which according to the prosecution suggests that there was a 'meeting of minds.'
- d) Ginsystem's business model was merely a copy of the PIPs business model.
- e) Ernest had apparently invested in a KTV lounge in Madagascar and the accused had not objected to this.
- f) Doanna gave evidence that prior to starting Ginsystem, Ernest had been running a ponzi scheme known as DMN [note: 10]. This was consistent with Peter Burton's e-mail to the accused dated 12 March 2005 (exhibit D21) where the former described DMN's model as:

"People paid money into the fund and this would double when others paid in after you, this concept is a flawed one because as the money grows more and more people need to pay in so the time to double gets longer and longer until the program stalls."

- g) Ernest was the de facto boss of Ginsystem and must have been aware of all the goings-on in Ginsystem Inc. If the accused was guilty of cheating the investors, Ernest must have agreed to it.

51. I noted that there was no direct evidence from any of the prosecution witnesses that pointed to Ernest being involved in a conspiracy to cheat. The prosecution, though conceding that the evidence of a conspiracy was circumstantial, nevertheless reiterated that this does not mean that the prosecution is subject to a higher standard of proof. The test is whether the circumstantial evidence must "inevitably and inexorably" lead to the conclusion that Ernest Thiam and the accused had conspired to commit the offence: **PP v Selvakumar Pillai s/o Suppiah Pillai** [2004] 4 SLR 280 at para 50.

52. As I saw it, assuming that the accused had made false statements with the intention to cheat, there were two competing possibilities:

- a) The accused acted alone and did not disclose to Ernest that his statements about the PPPs were false. Ernest therefore did not know that what the accused was saying was false (even though he may have been reckless as to the truth).

b) Ernest knew that the accused's statements about PPPs were false and agreed that the accused should tell the investors this false information.

53. In the present case, the prosecution had to show that the evidence pointed "inevitably and inexorably" and situation (b) and excluded situation (a) was possible (i.e. (a) was merely a fanciful possibility).

54. The first set of circumstantial evidence that the prosecution relied on was that Ernest had been told by fund managers that 2% per day was not possible and would have done his research to confirm this. Based on this, Ernest must have known that PPPs were fraudulent. However, I did not find this compelling, if this was so, would it not apply equally to the investors who were sophisticated investors who did their research before investing? It seemed equally possible that Ernest simply accepted what the accused said, even if he was reckless in doing so without making further checks.

55. One major factor that the prosecution relied on was that Ernest was the *de facto* boss of Ginsystem. Therefore, if the accused was cheating the investors, it must have been with Ernest's consent. However, this again raises the question whether Ernest was simply relying on the accused as the investment director to provide information on PPPs and did not know whether the information was false.

56. Even if I accepted that Ernest may need to account for the genuineness of his Madagascar investment, this did not mean that he knew that the accused's statements on PPPs were false. It may simply mean that he was dishonest and has no qualms about using Ginsystems' money for his own purposes rather than in the interest of the company. This would certainly make him guilty of other offences such as criminal breach of trust. But in the final analysis, I still could not conclusively rule out the possibility that Ernest may have a lesser state of subjective culpability, for example, that he was reckless as to whether PPPs were feasible or genuine. This would still be consistent with the possibility that Ernest had planned to run off with the investors' money – after all, Ginsystems Inc was not a viable company since it may have been in breach of British Virgin Island laws and the renewal of its registration was in doubt <sup>[note: 11]</sup>.

57. As for the fact that Ernest had previously run a ponzi scheme, this certainly fuelled my suspicion that he was up to no good with Ginsystem, but ultimately, mere suspicion was not enough.

### ***Cheating as principal offender***

58. The prosecution submitted that even if the court did not find evidence of a conspiracy, it should nonetheless consider whether the accused committed the offence of cheating as a principal offender under s.420 of the Penal code. The main issue is whether an amended charge at this stage would cause any prejudice to the accused's defence: **Garmaz s/o Pakhar v PP**[1995] 3 SLR 701. In the case of **Hwa Lai Heng Ricky v PP** [2005] SGHC 195, the High Court amended a charge of abetment by conspiracy to one of abetment by intentional aid. The High Court noted that the particulars of the charge relied on to make out the offences set out in the charges remained unchanged and the Chief Justice further held that he was of the view that there was "no doubt that the appellant was guilty of an offence under s.420 of the Penal Code."

59. I agree that this is the proper approach and that following the above cases, the court had to decide whether there was any prejudiced caused to the accused's defence. I felt that there was no such prejudice as the key issue for the original charge and a possible amended charge under s.420 is the same: Did the accused know that the representations made to the investors were not true?

60. Briefly, I will look at the elements of the offence of cheating under s.420 of the Penal Code in this order:

- a) What was represented to the investors?
- b) Are the representations attributable to the accused?
- c) Were the investors induced to invest?



d) Were the representations false?

e) What was the state of knowledge or intention of the accused?

***What was represented to the investors?***

61. There were 2 sets of representations:

a) Those contained in the website of Ginsystems

b) Statements made during the Seminar at Marriott Hotel and the two internet conferences.

62. All 10 investors referred to the Ginsystems website before investing with Ginsystems. The key contents of the website were part of the Agreed Statement of Facts ("ASOF") at Annex D. For ease of reference, I will reproduce the relevant portions here:

"Dynamic 2% Program

D2 is designed to allow ordinary people to invest without risking their hard earned life savings money. If you choose to invest in this program, we will invest the funds on your behalf and give you a profit of 2% per trading day. Your 2% profits are generated from our portfolio of investment programs such as bonds, IPOs, finance & property, private equity funds, forex, co-investing in direct investments and private placement investment funds etc."

"Private Placement Programs

Private Placement Program (PPP) is a product of the computer era in which fast trading of leveraged funds are used to generate profits.

Traders have Lines of Credit with their bank – usually one of the top 25 or 50 International Banks, which usually give them several times (sometimes 50 to 100 multiple) of the funds in their account, backed up by the Investors' Reserve Funds that act as compensating balance at his bank – even though the investors' funds may be in a different bank but blocked for the Program. With this kind of leverage of the funds these Traders can generate leveraged profit, this is how the large returns are available to be paid to the Program Investors."

63. The website also points out that the 2% per day returns are subject to a monthly maintenance fee of \$15 and a management fee of 5% to be applied to all profits generated. Withdrawals are also subject to a 2% withdrawal charge [note: 12]

64. In addition, the defence also pointed out that the website also contained an important disclaimer that investors could suffer losses (exhibit D1). This disclaimer appeared before payment was made by the investors. In any event, all the investors agreed that they knew that losses were possible.

65. The website is important because 8 of the 10 investors relied only on the representations made on the website to invest. As for two investors PW7 Teo Kim Tian and PW18 Choo Yong Heng, they attended the Seminar before investing but they also referred to the website.

66. The prosecution's case on what Ginsystem represented is contained in the charges. According to the charges, the alleged representation is that if the investor gave Ginsystems at least US\$450, Ginsystem would invest the funds on his behalf in a Private Placement Program or a Private Placement Fund Program or another legitimate investment from which he would be

given a profit of 2% per trading day. However, the claimed 2% profit is qualified by the disclaimer that the 2% was not guaranteed. Therefore, I felt that the representation should be reworded to take this into account and proceeded on the basis that the representation was:

“that Ginsystems had access to genuine High-yield investment programs known as Private Placement programs which had the potential to generate enough profit to pay investors a 2% return per trading day.”

67. I was also of the view that analysing the present case based on this reworded representation did not cause any prejudice to the accused as from the evidence, it was clear that the prosecution was not trying to prove that Ginsystem had guaranteed a 2% per day return but was rather focusing on whether PPPs were genuine or viable.

68. As for the seminar at Marriott Hotel, both Peter Burton and the accused spoke to investors. Technically, the seminar was only for persons who had invested but two of the investors mentioned in the charges attended it before investing.

69. The seminar at Marriott Hotel was attended by a CAD officer Johnson Tan (PW16) who was conducting an inquiry into Ginsystem. According to Johnson Tan, there were two speakers, Peter Burton and the accused. Peter Burton gave the impression that the company was already in existence and had been making profit from their PPPs because he said something to the effect that they had already profited from several successful PPPs. Peter introduced the accused as the fund manager who had experience and influence in the financial industry and had worked in either JP Morgan or Morgan Stanley.

70. The accused introduced himself as the investment director of the company and stated that he had a doctorate. The accused claimed that he had experience and connections in the financial industry which allowed him to have access to a variety of lucrative investment opportunities and PPPs. The accused stated that the monies collected from investors by Ginsystem Inc would be invested in PPPs and various financial products and the monies would be placed in a bank for participation in a PPP.

71. Further evidence was led that the following was said during the seminar or internet conference:

- a) The accused explained how PPPs worked.
- b) Ginsystem was planning to enter into some sort of joint venture with a condom factory (internet conference).
- c) Investors' returns would be paid from Ginsystem Inc's directors' pockets until they obtained their first PPP (Seminar). [note: 13]
- d) PPPs were exclusive investment opportunities not open to the public and that the returns for PPPs were supposed to be larger than the 2% returns per trading day [note: 14].

72. The representations made during the Seminar and internet conferences appeared to be consistent with what was said in the website. This was relevant in determining whether the representations in the website were attributable to the accused.

73. On the other hand, I also noted that though the main focus in the presentations were the PPPs, the accused in an internet conference also mentioned investing in a condom factory. This was consistent with the investments listed on the Ginsystem website. There was therefore no promise that Ginsystems would only invest in PPPs and nothing else. Of course, PPPs were a prominent selling point for Ginsystems since they were the basis of the claim that 2% per trading day was achievable.

74. There were other sorts of representations which were not material in themselves in the sense that there was no direct evidence that they were factors which induced the investors to part with their money. For example, the accused claimed that he had worked for JP Morgan or Morgan Stanley when in reality he merely had dealings with them in his other jobs.

75. As for the issue of whether the accused or Peter Burton had represented that Ginsystem had entered into successful PPPs at the time of the seminar, I noted that there was some ambiguity in the evidence and I was prepared to give the defence the benefit of the doubt in this matter. For example, PW10 Daniel Lim stated that when the accused said that Ginsystem had 'secured' PPPs, he understood this to mean that Ginsystem had been invited to participate in a PPP and that they were still negotiating. Then there is also the evidence of the investor PW4 Soh Kian Giap who claimed he heard at the seminar that investors' returns would be paid from the directors' pockets until they obtained their first PPP which seemed to imply that Ginsystems had not obtained their first PPP yet.

76. As for the internet conferences, the accused himself admitted that he had concealed the fact that at that time, they had not secured the PPP and had told the investors that they had invested the money. At the time of the internet conference, they were still awaiting the result of their appeal to the bank concerning the issuing of the MT760 [note: 15]. Though certainly lying to investors cannot be condoned, what matters is whether at that time, the accused nonetheless believed that PPPs were genuine and the fact that the accused lied in this instance was neither here nor there.

### ***Are the representations attributable to the accused?***

77. Sometime around October or November 2004, PW10 Daniel Lim went to Ernest Thiam's office at Suntec Tower and was introduced to Danny Tan, Doanna Neville and Muhammad Hisham Bin Muslim. The accused was not involved at this stage. During this meeting, Ernest Thiam informed the rest that he wanted to launch an on-line investment program similar to that found in a website called www.pureinvestors.com or PIPS. When Daniel asked how it was possible to pay 2% daily returns, Ernest replied that there was a program called a "Private Placement Program" ("PPP") that could generate such returns and that his friend, the accused, was involved in PPPs.

78. Subsequently, sometime in November or December 2004, Ernest introduced the accused to Danny, Doanna, Hisham and Daniel Lim. The accused explained PPPs to them. However, they remembered only snatches of what the accused said. For example, Hisham recalled the accused saying that a PPP would earn between 20% to 40% per week for a fixed duration. Hisham and Doanna both confirmed that the accused mentioned PIPS and the PIPS website during this discussion [note: 16],

79. At about the same time on the third week of November 2004, Ernest had approached M/s Newmedia to design a website for Ginsystems Inc. On 7 December 2004, M/s Newmedia forwarded their project proposal to Ernest Thiam and after this, the website was launched. According to Danny Tan, though the website was launched, it was very much a work in progress as Danny Tan had to continue filling in the contents of the website pursuant to Ernest Thiam's directions [note: 17].

80. Based on the evidence of Danny, Doanna, Hisham and Daniel Lim, it appeared that the accused was the expert on PPPs. According to Danny Tan, Ernest Thiam did not appear to know how something like PIPS could generate 2% returns per trading day until he met the accused [note: 18]. The accused did not dispute that he explained Ernest Thiam that PIPS was likely to be generating its revenue through PPPs.

81. However, the accused maintained that when he was asked by Ernest Thiam about PIPS and PPPs, he did not know that Ernest Thiam was starting up a company to collect money from its members to fund the PPPs. He claimed that he only knew about it on 27 December 2004 when Ginsystem Pte Ltd was registered [note: 19]. Therefore, even if Ernest put what the accused told him about PPPs onto the website, the accused had no knowledge of this.

82. I found the accused's claim that he had no knowledge of the contents of the website and of Ginsystem's business model until 27 December 2004 lacking in credibility. According to the accused, he joined Ernest Thiam's company as an investment director whose job was to find suitable investment opportunities but he did not bother to ask where the funds were coming from.

83. In addition, his evidence in court was contradicted by his voluntary statement to the CAD recorded on 10 May 2005 by Alan Kit (exhibit P82) where he stated at answer 12 that Ernest told him much earlier that Ernest "had members in his company and they are willing to lend money to his company to invest."

84. Furthermore, there was no evidence that the accused objected to any of the contents of the website or to soliciting funds from 'members' after he claimed to have found out about Ginsystem's business model. In fact, given his active participation in the seminar and internet conferences, he approved of what Ginsystems was doing.

85. I find that the accused knew at the time he briefed Ernest Thiam and the Singapore directors on PPPs that they were going to solicit funds from 'members' or investors and the attractive returns promised by PPPs were going to be a key selling point. Before the accused came onto the scene, the others did not have information about PPPs. Therefore, the statements on the website, in particular, those that described PPPs as found in Annex D of the ASOF are attributable to the accused. This is in addition to the representations he made personally at the seminar and internet conferences.

### ***Were the investors induced?***

86. It is not disputed that the ten investors named in the charges had delivered various sums of money to Ginsystem Inc either through e-payment processors or through a direct telegraphic transfer to Ginsystem's Hong Kong bank account. The issue I will deal with next is whether they were induced by the representations attributable to the accused.

87. All ten investors have testified that the representation that they would be paid 2% returns per day played a role in their decision to invest with Ginsystem Inc. Being internet-savvy and well-educated investors, they knew that a return of 2% per day was an unusually high amount and that regular investments would not deliver such high returns. That was where PPPs came in. PPPs provided the basis for Ginsystem's claim of being able to deliver 2% returns per day though the returns were not guaranteed. It also did not matter that there were representations on the website and in the internet conference that Ginsystem would also put money in other types of investments.

88. The investors were therefore not induced by a promise of a guaranteed 2% return (since all admitted that they knew that the 2% return was not guaranteed). Neither were they induced to believe that Ginsystem would only invest in PPPs (since the website said they would invest in a variety of things including PPPs and the accused had mentioned a condom factory during the internet conference). Instead, they were induced by the representation that Ginsystem had access to a genuine high-yield investment called PPPs that had the potential to generate such returns and that Ginsystem would put money into PPPs for this purpose.

### ***Were the representations false?***

89. I have found that the accused knew that the information he gave Ernest about PPPs would be used to encourage investors to invest with Ginsystems. I have also found that the investors were induced by the representations that Ginsystems had access to a high-yield investment called PPPs which had the potential of delivering 2% returns per day to investors.

90. The next essential ingredient that the prosecution has to prove is that the representations attributable to the accused were false and that the accused knew that they were false. As highlighted earlier, I found that there was prima facie evidence at the close of the prosecution's case that this was the case. The question now at the close of the whole case was whether the additional evidence from the defence raised a reasonable doubt.

91. The first step is to determine whether or not PPPs were not feasible and not genuine. According to the accused, a PPP involved the following parties:

- a) the investors;
- b) the intermediaries who helped investors arrange for investment in PPPs;
- c) funders who arranged for the leveraged credit line based on the investors' funds; and
- d) traders who traded using the leveraged credit line.

92. There would be other facilitators who worked for the funders or traders but basically, these persons were just salesmen who would find investors for the funders or traders. Ultimately, the trading contract would be between the investors and the traders. There could be other contracts between the investor and intermediaries to give the latter a commission for their assistance in arranging the PPPs.

93. So far, this was relatively uncontroversial insofar as leveraged trading was not something new. It seemed entirely possible that there were traders (be it in equities, derivatives or commodities) who were looking for capital to act as collateral for their leveraged trading activities (whether or not it was illegal for them to do so would depend on many factors such as the jurisdiction they were in).

94. However, the accused claimed that one additional factor that distinguished PPPs from other investments was that investors' funds in a PPP would never be at risk. This was because PPPs had various safeguards. For example, investors' funds would be left in the investors' bank or at worst, moved to the bank where the leveraged credit line was extended but the account would still be under the name of the investors. According to the accused, the funds would be 'blocked' as such and investors **would never lose the capital nor have to come up with extra funds at any time**, even if the traders made losses in trading with the leveraged credit line. Ostensibly, the investors' money was to be used as collateral in order to establish a credit line for leveraged trading, yet on the other hand, this collateral was not really collateral since investors could never lose the capital. One wonders why a bank (especially one of the world's top 25 banks) would grant a credit line under such circumstances.

95. In return, **the trader was contractually obliged to pay the investors extremely attractive returns of several times over the principal amount over a fixed period** (for example, 40 weeks). A promise of a 100% per month return was not uncommon in such PPPs.

96. The prosecution called Andrew Kwek (PW19), the Executive Director of the Investment Management Association of Singapore to testify on his knowledge of 'high-yield investments.' Prior to the trial, Andrew Kwek had never heard of PPPs and had never heard of an investment where 15% weekly returns were promised. In his experience, where leveraged trading is concerned, if a trader suffers losses in a leveraged position, he is required to 'top-up' his collateral within one to three days.

97. I find that the PPPs described by the accused which guaranteed that the investor would not suffer any loss to his principal and yet contractually promise returns of several times the principal over a short period of time was not a viable and not a genuine investment.

#### ***What was the accused's knowledge and state of mind?***

98. This leads to the key issue. Did the accused know that PPPs were not feasible investments and possibly even fraudulent? The prosecution's submission was that even if the accused protested that he believed that PPPs were genuine, he was wilfully blind to the truth.

99. Before beginning my analysis of the evidence in relation to this issue, I wish to comment on the evidence of PW5 John Loke Chye Huat, the CAD accountant. Some parts of his evidence were not controversial, for example, he did not find any evidence of returns from PPPs or any significant revenue stream. This was not disputed by the defence since their case was that Ginsystems was still in the process of negotiating PPPs.

100. As for the money that was not accounted for, there were two issues:

- a) First, did the prosecution prove that the money was actually missing, as opposed to being kept in other accounts such as the electronic payment gateways.
- b) Second and more importantly, whether the accused had anything to do with the missing money.

101. For the second issue, none of the Ginsystems directors gave evidence that the accused had anything to do with the missing funds. As such John Loke's evidence on this aspect was not a significant factor in decision.

102. In determining the state of knowledge of the accused and his overall credibility as a witness, I took into account the following:

- a) The accused's account of his past experiences with PPPs.
- b) His attempts to secure a PPP for Ginsystems.
- c) Other evidence in court that went towards his general credibility as a witness:
  - i. Educational qualifications and job background
  - ii. Statement to the CAD
  - iii. His statements in his bail affidavit.
  - iv. His explanation as to why he did not seek professional advice from fund managers or lawyers who would have warned him that PPPs (in the form he described) were not feasible.
  - v. Existence of a motive.

*Accused's past experience with PPPs*

103. One of the reasons why the accused believed that PPPs were successful was his previous involvement in such transactions. In court, he testified that he had the following experiences:

- a) In 1997, the accused was approached by his friend Fauzi. He gave Fauzi US\$150,000 got back US\$450,000. This was paid to him in cash of US\$90,000 a month over 5 months. When Fauzi approached him to invest a further US\$500,000, the accused was not prepared to as Fauzi was not prepared to include the accused's name in the bank account where the money was to be held. Despite having no other information on the transaction, for example, whether it was something legal or illegal, the accused chose to call this transaction a PPP.
- b) In 2002, the accused helped to arrange a US\$50 million PPP for a Taiwanese investor known as Hsieh Poh Chung. Hsieh had been introduced to the accused by one Lee Pak Choy. Thereafter, the accused acted as an intermediary for Hsieh by arranging for a PPP for Hsieh through a lawyer known as Sarbjit Singh. Sarbjit had found a humanitarian foundation that managed to get a European trader for a PPP. The accused claimed to have paid US\$300,000 as commission for his role as agreed with Hsieh. The accused's role ended halfway as the trader wished to communicate directly with Hsieh. Hsieh was supposed to earn 25% per month for about 1 year but the accused had no actual knowledge of what the returns were.
- c) The next transaction the accused called a PPP was with Alfred Lai where the accused had invested US\$100,000. However, this was not technically a PPP as the money was merely used to secure the issuance of a bank guarantee that would be used to invest in a project in China. This was also established in the accused's statement to the CAD on 10 May 2005 (exhibit P90) where there was absolutely no mention of PPPs.

104. His accounts of his past experience with PPPs were inconsistent with what he had told others:

- a) He also told the Ginsystems directors such as Hisham, Doanna and Danny Tan differing accounts of his PPP experiences. Of course, I had to give allowance that Hisham, Doanna and Danny Tan may have recalled incorrectly what they were told. His statements to the CADs also contained many inconsistencies in his account of his first PPP with Fauzi:

- i. He claimed that his first dealing with PPPs was with Fauzi 3 years ago (P86 Answer 87 and 88)
- ii. He further claimed that he learnt about PPPs from a fund manager in 2000 (P87 Answer 12 )

105. Since his PPP experiences were either extremely positive (resulting in huge profits) or an outright loss (in the Alfred Lai transaction), he should have had a clear recollection of them. It seemed surprising that he was constantly wavering on the details.

*His attempts to secure a PPP for Ginsystem*

106. The various PPPs offered to the accused between December 2004 and May 2005 were helpfully compiled into a table by the prosecution in their submissions.

107. Overall, the contractually guaranteed returns promised by all 6 PPPs were nothing short of amazing which would make anyone question their authenticity, especially if they were accompanied by a promise that there was absolutely no risk to the investors' money. Looking through the PPP documents, the names of the parties involved in PPPs also seemed unusual and included:

- a) World Vision for Food & Housing Trust
- b) The Healing Community Inc.
- c) Oriole Humanitarian Trust.

108. **First PPP:** For the first PPP. Tony Li sent an e-mail dated 20 December 2004 to the accused offering a program for a minimum investment of US\$100,000 (exhibit D7). I took note of the following:

- a) The US\$100,000 PPP was something that the accused could easily afford to go in by himself. Therefore, one wonders why he had not completed more PPPs of this nature on an individual basis (his other claimed PPPs being solely lacking in paperwork).
- b) The prosecution pointed out that the accused claimed during cross-examination that this PPP was stopped due to the Standard Chartered Bank not being able to issue an MT760 [note: 20] and this was different from his earlier stand that it was the second PPP that was stopped by the absence of an MT760. However, I gave the benefit of the doubt to the accused and accepted that this was merely a mix up.

109. **Second PPP – “the MT760 PPP”:** For the second PPP, on 30 December 2004 (Exhibit D8), the accused sent a letter of intent for Ginsystems to enter into a PPP for US\$200,000. But by the time he went to Hong Kong to finalise the deal, the account has swelled to US\$300,000. By February, the amount was US\$400,000 and new documents were issued to reflect this revised amount (Exhibit D9). According to the accused he had signed all the relevant documents (exhibit D3 page 66) and was waiting for the MT760. According to the accused, MT760 was a SWIFT message to block the US\$400,000. Nevertheless, the money was perfectly safe. However, since the Standard Chartered Bank was unwilling to issue an MT760 and this PPP fell through. I took note of the following:

- a) From Exhibit D3 page 66, it appears that the other contracting party was “William F Dippolito P.S. Inc (Law Office). Since PPPs are supposed to be concluded between the trader and the investor, it seemed odd that this PPP was concluded with a lawyer. When the accused was asked why Ginsystem was contracting with a lawyer instead of a trader, the accused replied that William F Dippolito was Tony Li’s lawyer! [note: 21]
- b) This PPP has a special feature in which Ginsystem was allowed to tell the trader that Ginsystem needed \$1 million immediately because there was a possibility that the trader could give Ginsystem a \$1 million cash advance just because Ginsystem had blocked US\$400,000 in it’s own account. [note: 22]

c) From the contractual document, the US\$400,000 was supposed to be invested in a Hong Kong Project (Cold Roll Mill in Tseung Kwang O Industrial Estate) (Exhibit D3 page 72). This was contrary to two of the accused previous claims (i) that investors will never know specifically what traders use their funds for and (ii) traders invest in financial instruments or equities and not in concrete business. It also seemed odd that investment in a Cold Roll Mill could give such huge returns. When asked about this, the accused explained that the trader was making an investment in a Cold Roll Mill and that he trusted the traders. [note: 23] In court, he claimed that he agreed claiming that Tony Li had told him that the traders wanted it drafted that way. However, in his CAD recorded on 23 May 2005 (exhibit P85), the accused stated that the Cold Roll Mill clause was drafted that way for Tony's own purposes and that Tony had told him so.

d) I would add that it is unfortunate that there was no evidence on what an MT760 actually was, for example, whether it was really something that 'blocked funds' or whether it was something else, like the issuing of a guarantee to the trader (which would then mean that the funds were at risk).

110. **Third PPP - 2 similar programs offered but payouts "too far apart":** Following the failure to achieve anything with Tony Li, the accused contacted Fauzi to see if he had any contacts. At the end of February or early March 2005, Fauzi introduced Irene to the accused:

a) This led to Irene sending the accused an e-mail about a 43 week program which gave a 100% return per week less fees (exhibit D4 page 1). Despite the promise of 4300% returns in less than a year, the accused deemed the program unattractive because the payouts were too far apart. According to Irene, the payouts would be on the 1<sup>st</sup>, 6<sup>th</sup>, and 12<sup>th</sup> month. Therefore, after 1 month (4 weeks), the program would give a 400% gross return to Ginsystem, more than enough to cover the 2% per day promised to investors so I failed to understand why the accused rejected the program because the 'payouts were too far apart.'

b) Irene then sent an e-mail on 23 February 2005 at 2.33 am (Exhibit D4 page 2) outlining a new program with a Swiss Bank with a minimum investment of merely 50,000 Euros. At that time, Ginsystems had US\$594,000 in their account. The gross profit was 100% per week for 43 weeks. Similarly, despite a promise of 4300% returns in less than a year, the accused was not interested because the payouts were too far apart even though, like the earlier PPP, Ginsystem would get a 400% return after 1 month.

111. **Fourth PPP: The German Program:** For the fourth PPP, Irene sent an e-mail one and a half hours later on 23 February 2005 at 4.04 am (Exhibit D4 page 10). She offered a German program whose minimum investment was normally \$100 million but was available for \$1 million for a limited time only and promised a return of 540% over one year.

a) According to the accused, this PPP was very safe as the money will always remain in a bank account under Ginsystem's name [note: 24]. However this was contradicted by Exhibit D4 page 13 which clearly states that at the top of the page that **"the tri-party agreement allows the cash in the Principal's account to be transferred to the Trader's account"** and in return, the principal or investor would receive two bank guarantees.

b) According to the accused, he had signed all the documents necessary to enter into the German program (exhibit D4 page 31). However, at that stage, Ginsystem's account had not reached US\$1 million yet but they forwarded the documents first to allow the facilitators time to perform due diligence.

c) On 11 March 2005, Ginsystem's bank account reached \$1 million. Just before that, the accused claimed that he deposited \$10,000 of his own money into the account in order to reach \$1 million. The accused then forwarded further documents to Irene in order to proceed with the PPP (exhibit D4 page 61 to 69). Some of these documents seemed inconsistent with the structure of a PPP. For example, in the letter of intent (exhibit D4 page 68 and D13 - original), the accused appointed Carlton International Investments Inc "as our adviser to furnish, supervision (sic), review and advice (sic) on the investment of the Funds."

d) As to what Carlton International Investments was, the accused claimed that it was Forest Yoder's 'associated company.' Apart from the grammatical mistakes highlighted by "sic" above, the first paragraph of the document did not seem to make sense. Basically, it stated that Carlton International Investments was represented by Carlton International



e) Apart from Carlton International Investments, another party came into the picture in the "facilitator fee agreement" at D13. In the fee agreement, the accused agreed to pay facilitator fees to the "Oriole Humanitarian Trust." The accused conceded that he had no idea what this Trust was about and when pressed further why they were in this agreement, the accused stated:

Q: From the second page of this document under the subheading "Fees", it appears that the principal Ginsystem is paying Oriole Humanitarian Trust. Why is Ginsystem getting involved in paying Oriole Humanitarian Trust?

A: The facilitator wants Ginsystem to know that certain percentage in their profits are for humanitarian projects [note: 25].

f) In exhibit D21, the accused had e-mailed Peter Burton regarding this PPP. He stated "if we don't try, we will not know whether it is true or not, the return for the PPP is 540% [note: 26]". Though the prosecution submitted that this was evidence that the accused did not believe that PPPs were genuine, I would not go as far as that. This could simply be a casual comment to Peter Burton who had probably asked whether the PPP was real.

112. **The fifth PPP - Swiss program:** Despite all these efforts to join the PPP, Irene e-mailed the accused on 5 April 2005 informing him that the German program was fully subscribed (exhibit D4 page 86). However, based on the documents submitted, he was eligible for a Swiss program with returns that were as good as or better than the German program. The daily return per day was anywhere between 5% to 72% and compounding was allowed. [note: 27]

a) There was an e-mail sent by one Grant on 26 April 2005 to Danny Tan's e-mail account (exhibit D4 at page 99). The accused claimed that Grant was a trader-facilitator for the Swiss PPP. However, the e-mail originated from Irene's e-mail account. This in itself was highly suspicious.

b) In any event, the accused claimed to have submitted all the necessary documents and was waiting for instructions to travel to Switzerland in order to sign the final PPP agreement.

113. **The sixth PPP - US Trading contract:** On 30 April 2005, Irene e-mailed the accused to inform him that they had to 'queue for a long time' before they could enter the program (exhibit D4 page 102). However, Irene broke the good news that she had just received a trading contract for trades conducted through the Bank of America. Under the trading contract, the principal is protected by a stand-by letter of credit while 50% of the client's funds are used for a credit line. According to the accused, he believed based on page 103 that he would get \$3.5 million profit in 10 weeks.

a) Initially, the accused was informed that he would receive a draft SBLC from the Bank of America. Subsequently, he received a draft unsigned SBLC with the letterhead of Commerce Bank instead (Exhibit D20 page 2). On 6 May 2005, the accused faxed this draft to Standard Chartered Bank of Hong Kong for Andy Chan (a bank officer there) to go through. On 10 May 2005, the accused was arrested by the CAD and did not know whether Standard Chartered Bank had replied.

*Some of the PPPs had insufficient returns to cover Ginsystems' investment goals*

114. At Exhibit D3 page 66, the agreement between the Ginsystem and William F Dippolito, the contract stated that William F Dippolito was to wire US\$400,000 each month into Ginsystems' account. This amounted to a 100% return on the initial US\$400,000 investment per month.

115. At Exhibit D3 page 75A-75D, the accused had promised to pay 60% of the total profits payable to the investor to various intermediaries. This meant that only 40% of the total profits remained. This was not enough to cover the 2% per day payable to investors and Ginsystems' operating expenses. As highlighted above, the profits payable were subject to deduction of some administrative and withdrawal charges, but these were not significant.

116. As for the fourth PPP which promised either a 540% return per year, after Irene Lee's commission of 45% of the returns contracted for between the trader and Ginsystem Inc, this would mean the Ginsystem would only make at most 297% of the invested sum which would not be sufficient to cover the returns of 480% per year promised to investors.

117. When the accused was confronted by this, he backtracked and claimed that the 100% return was the net return after the 60% of fees were deducted, but a reading of the contractual documents will show that the 100% returns were subject to the 60% of commissions since fee agreements were completely separate from the contract which promised 100% returns.

118. By proceeding with PPPs that would have been ultimately unprofitable to Ginsystems, I agree with the prosecution that this showed that the accused had no real intention in investing in PPPs but was merely going through the motions.

#### *Accused signing 2 identical documents*

119. The prosecution also pointed out that the accused at the request of Irene Lee actually signed two identical documents, once on 5 April and the other on 18 April 2005 (exhibit D14 and exhibit D4 at pages 95-98). No explanation was given by Irene why she needed the accused to sign twice (for example, the earlier document was misplaced) and the accused did not seem to notice and did not ask why this was the case. The implied that the accused did not care about the documents he was signing.

120. At this stage, in April 2005, after unsuccessful attempts at securing PPPs, he must have realised the importance of securing this PPP as Ginsystems' obligations to repay investors were increased day by day. Furthermore, with some reason to believe that the so called facilitators may have been taking the accused for a ride, one would have expected the accused to begin to start paying even closer attention to the documents he was signing.

121. I agreed with the prosecution that this was further evidence that the so-called PPP negotiations were simply for show and a smokescreen for the authorities and curious investors.

#### ***Accused's lack of awareness of his own educational qualifications***

122. When giving evidence in court, the accused claimed to have received his Doctorate in "business management" from American Coastline University. However, when the CAD asked him this same question, he told them on 10 May 2005 (exhibit P90 paragraph 1) that he graduated from "Honolulu University" with a Doctorate in "Business & Administration" then 7 days later, told the CAD he could not remember which university it was. The accused explained that he told the CAD that he attended a University in Honolulu rather than Honolulu University. I would add that even if I accepted this, the question remained why, when asked by the CAD, he was not able to remember the name of the University where he obtained his PhD.

123. The accused was equally hazy about the year in which he was awarded his PhD. In court he claimed he obtained it in 1998 but when he was asked to produce the degree it was dated 1995. And amazingly, the accused's PhD was accompanied by a document purportedly signed by the then Secretary of State of United States Warren Christopher attesting to the authenticity of the degree (exhibit D22). The accused agreed that the Secretary of State of the United States was an important person "like a Prime Minister", yet he did not wonder why the Secretary of State was taking the time to authenticate a PhD from "American Coastline University."

124. I would add that in assessing this aspect of the evidence, I did not find it necessary to determine whether the accused's educational qualifications were a sham since it was basically peripheral to the present inquiry. However, I noted that the accused's attitude and reaction to a document that a reasonable person would suspect to be forged – the document purportedly signed by the US Secretary of State, was very similar to his attitude and reaction to PPPs.

#### ***Inaccuracies in the accused's statements to the CAD***

125. The prosecution highlighted several inconsistencies between the accused's evidence in court and his evidence in the statements. I do not propose to make an express ruling on whether the accused's credit was impeached but I carefully considered the inconsistency and the explanation proffered for the purpose of an overall assessment of his credibility. I will highlight the inconsistencies that I felt to be more significant:

126. When asked about Ginsystem's existing investments, the accused informed the CAD in his statements (exhibit P82) that:

- a) Ginsystem Inc had invested in stocks "through some brokers in US and some mid term notes through US securities firms"
- b) US\$300,000 had been invested in US securities firms.
- c) US\$300,000 had been wire transferred from Ginsystem Inc's account in Hong Kong

127. These statements were shown to be inaccurate and the accused admitted as much. His explanation was that the US\$300,000 referred to the fixed deposit he placed as proof of funds for the PPP. I found his explanation wholly untenable in view of the clear unequivocal words of the statement that the money had been invested in "stocks and mid-term notes" through US brokers and securities firms respectively.

### ***Accused's Bail Affidavit***

128. The accused's own affidavit (exhibit P81) which was given in his application to the High Court for a variation of bail also carried significant inconsistencies:

- a) Despite the accused's claim that he had no idea how much leverage traders would get when trading for PPPs, he had stated at paragraph 16 that the leverage would be "frequently" be "10 to 20 times."
- b) At paragraph 20, the accused stated that the final 6<sup>th</sup> PPP was hours away from going into effect when the CAD arrested him. This was clearly a massive exaggeration as Andy Chan has yet to get back to him on the draft SBLC and thereafter it would still have taken time to get the actual SBLC and to sign the final contract.
- c) At paragraphs 23, the accused exaggerated how long he had worked for Ginsystem Inc and claimed that his role including establishing Ginsystem's reputation or relationship with clients or creditors whereas in fact he only claimed role was to secure PPPs.
- d) At paragraphs 34 and 36, the accused claimed that he had to leave jurisdiction for the UK and US to repair investors' confidence when he had never dealt with them before and in any event, Peter Burton, the CEO could easily do the job.

129. Clearly, an affidavit to be filed in court is not to be taken lightly. I found the inconsistencies and misleading nature of these above statements relevant in deciding on the accused's general credibility.

### ***Legal and Professional Advice***

130. In deciding on the state of knowledge of the accused, for example, whether the accused was wilfully blind to the obvious, the question of whether the accused had sought professional advice before embarking on PPPs has to be considered. If the accused had contacted a lawyer or professional fund manager in Singapore, he would certainly have been warned about viability of PPPs.

131. The accused was certainly aware of a risk that some PPPs could be fraudulent. When shown the printout of the US government website which issued a warning on PPPs, the accused admitted that he was aware that there were warnings that 'prime bank trading programs' were not genuine though he did not actually go into the website. <sup>[note: 28]</sup> However, his fears that PPPs were not genuine were allayed by Tony Li's explanation to him:

Q: What did you find out?

A: I asked the trader facilitator on this notice that had been in the website, he told me, don't worry about the website, what he is doing is a genuine one, because certain things are confidential and cannot announce officially. He said, this one is in the website for many years. He said what they are doing now with the trader is doing something that is a genuine one.

132. However, the accused did not mention what characteristics of Tony Li's or for that matter Irene Lee's PPPs distinguished them from fraudulent ones. It seemed that the accused simply took Tony Li's word for it even though he had never completed a PPP successfully with Tony. In fact the only transaction the accused completed with Tony Li was the Alfred Lai where the accused lost US\$100,000. This did not seem to make the accused more cautious about such dealings; instead he claimed that the fault was not with PPPs, but with Alfred Lai- to him, PPPs were still sound, even though there were dishonest traders/facilitators around.

133. It was also not as if the accused did not know the importance of lawyers. When he was a director of Malaysian public-listed companies he used lawyers for corporate exercises in order to do "due diligence."<sup>[note: 29]</sup> Furthermore, since he claimed to have worked with JP Morgan or Morgan Stanley, he would no doubt have been familiar with the thoroughness of the 'due diligence' procedures of major international firms.

134. But when it came to PPPs, the only contact the accused had with lawyers was with one Sarbjit Singh from a Malaysian firm known as Sarbjit and Koh. When he was arranging a PPP for the Taiwanese investor Hsieh, he did speak to Sarbjit Singh about PPPs as apparently, Sarbjit Singh was also involved in PPPs<sup>[note: 30]</sup>. However, the accused spoke to Sarbjit Singh not because he was a lawyer but because he was involved in PPPs. He did not rely on Sarbjit's legal knowledge and claimed that Sarbjit spoke to him as a layman.<sup>[note: 31]</sup>

135. When he signed the documents for the PPPs which Tony and Irene arranged, he claimed that he did not consult lawyers<sup>[note: 32]</sup>. Given the large amounts involved and the potential profits, Ginsystems could easily afford to engage lawyers and professional fund managers to advise them on the PPP documents and on items such as the ICC rules on arbitration<sup>[note: 33]</sup>. At the same time, I also found it strange that at page 64 of D4 which relates to the fourth PPP involving Carlton Investments, Sarbjit Singh is listed as the accused's legal advisor.

### **Motive**

136. The defence submitted that the accused had no motive to cheat the investors. Instead, as investment director of Ginsystems, he had every reason to ensure that the investments were a success.

137. In response, the prosecution pointed out that the accused had been making moves to attempt to use Ginsystems investors funds in relation to his company South China Sea. For example, he had wanted to use US\$15,000 of Ginsystems funds to buy out his South China Sea partner Chang Fatt. In addition, he had wanted to perform a "corporate exercise" to use South China Sea to acquire a condom and glove manufacturing factory in Malaysia. In other words, Ginsystems' funds represented a way by which the accused could further his corporate ambitions to list South China Sea on NASDAQ.

138. I was of the view that the evidence concerning the accused's motives was not significant given the nature of other evidence that showed more directly the state of the accused's knowledge.

### **Analysis**

139. Though the offence of cheating requires the accused to know that his representations concerning PPPs were false at the time he made them, his knowledge at this earlier time can be inferred from his subsequent conduct, particularly his conduct in relation to the various PPPs that were offered to him by Tony Li and Irene Lee.

140. There were the following possibilities concerning the accused's subjective culpability:

a) The accused knew that the representations were false.

b) The accused did not know that the representations were false but was conscious of a risk that the representations were false and carried on anyway (recklessness).

c) The accused did not have the knowledge nor was he reckless (whether he was negligent being a separate objective test unrelated to his subjective state of knowledge).

141. For an offence of cheating to be made out, the prosecution has to prove beyond a reasonable doubt scenario (a). For scenario (b) and (c), the requisite mens rea for cheating would not be made out though the court would still have to consider the applicability of s.199 of the Securities and Futures Act ("SFA").

142. In view of my ultimate finding it is not necessary at this stage for me to decide whether Ginsystem's "Dynamic 2%" program was a collective investment scheme for the purpose of s.199 of the SFA. However, I would add that key factors that suggested that the "Dynamic 2%" program was a collective investment scheme was that the 2% return was not a guaranteed figure and that there was a risk of loss. In addition, investors' returns were subject to a 5% "management fee" to be applied to all profits generated.

### ***My finding***

143. I have found that the representation that Ginsystem had access to a viable and genuine high-yield investment called PPPs was attributable to the accused and that the accused knew that the representations would be communicated to investors to encourage them to invest with Ginsystem. I have also found that this representation was a major reason which induced the investors to invest. I have further found that PPPs as described by the accused were in fact not viable and not genuine. The last finding I have to make is therefore on the knowledge of the accused.

144. I found the conduct of the accused in his purported quest to secure a PPP for Ginsystems most telling. The accused was offered a total of six different PPPs as highlighted in the table above. All claimed to be able to deliver huge returns of several times the initial investment without any risk to the investors' capital. I found such promises to be ludicrous in the absence of any real explanation as to how they worked – for example, since PPPs were mentioned in the same breath as leveraged trading, there was no explanation why a bank (and in the case of PPPs, it would be one of the world's top banks) would grant a credit line for leveraged trading if no real collateral was offered. As highlighted, all the documents that accompanied each of the PPPs contained suspect parts which called for caution. Nevertheless, the accused carried on without making any inquiries with professional fund managers or lawyers on the viability of each of these 6 PPPs.

145. As for the defence that the accused's had expended great efforts to secure a PPP and this showed his lack of knowledge that they were not feasible, I found instead that there were many indications that the accused did not seem serious in wanting to securing a PPP for the reasons found in my analysis of the 6 PPPs.

146. Therefore, I find that the accused was wilfully blind to the obvious fact that PPPs were not feasible and not genuine investments and infer from this wilful blindness that he knew that PPPs were not feasible and not genuine investments. He knew this all along and that was why he did not bother to obtain professional or legal advice on any of the 6 PPPs. Coupled with my finding that he knew that his false representations would be communicated to investors for the purpose of encouraging them to invest, this meant that the accused had possessed an intention to cheat the investors.

147. In the circumstances, this meant that the defence had failed to raise a reasonable doubt in the prosecution's case. I find that the prosecution has proved beyond a reasonable doubt that the accused has committed the offence of cheating as the principal offender under s.420 of the Penal Code in respect of each of the 10 investors and I convict the accused accordingly on amended charges under s.420 of the Penal Code.

### ***Sentence***

148. In determining the sentence, I took into account the amounts involved, the fact that investors may not be able to recover all their money, and the accused's role in the offence. The fact that the accused still faced 59 outstanding charges did not affect my decision as the charges were not taken into consideration for the purpose of sentencing. After careful consideration, I imposed sentences of between one to eight months' imprisonment per charge depending on the amounts involved. I ordered three of the sentences to run consecutively for a total sentence of 18 months' imprisonment. There has not been any appeal against sentence.

149. At the time of preparing this judgment, the accused is on bail pending the hearing of this appeal.

---

[note: 1]PS8 para 7, PS 9 para 7 and PS10 para 6

[note: 2]PS1 (conditioned statement of Andy Pe)

[note: 3]PS13 para 25

[note: 4]NE @ page 13

[note: 5]NE @ page 187

[note: 6]NE @ page 189

[note: 7]NE @ page 193

[note: 8]NE @ page 204

[note: 9]NE @ page 215

[note: 10]NE @ page 78

[note: 11]Evidence of PW1 Andy Pe – PS1

[note: 12]ASOF Annex H

[note: 13]PS4 para 4

[note: 14]PS4 para 5

[note: 15]NE @ page 539

[note: 16]PS 9 para 7 and PS10 para 6,

[note: 17]PS13 para 14

[note: 18]PS13 para 6-8

[note: 19]NE @ page 411

[note: 20]NE @ page 435

[note: 21]NE @ page 445

[note: 22]NE @ page 453

[note: 23]NE @ page 450

[note: 24]NE @ page 245

[note: 25]NE @ page 470

[note: 26]The PPP return according of D4 page 13 is 600%. 540% apparently refers to a default situation where the trader is required to trade the bank guarantee for cash in order to return the money to the investor.

[note: 27]18% x the maximum of 4 trades in a day

[note: 28]NE @ page 513

[note: 29]NE @ page 309

[note: 30]NE @ page 354

[note: 31]NE @ page 368

[note: 32]NE @ page 443

[note: 33]NE @ page 482

**BACK TO TOP**