Public Prosecutor *v* Yap Chee Yen
[2014] SGDC 219

Case Number : DAC 020671/2013 & others, Magistrate's Appeal No. 130/2014/01

Decision Date : 19 June 2014

Tribunal/Court : District Court

Coram : Soh Tze Bian

Counsel Name(s) : Deputy Public Prosecutor, Ms Magdalene Huang for the Prosecution; Mr Derek Kang & Mr Loh Kia Meng (Rodyk & Davidson LLP) for the AP

Parties : Public Prosecutor — Yap Chee Yen

19 June 2014

District Judge Soh Tze Bian:

(A) Charges

1 The accused person (AP), a 36-year old male Singaporean, was at the material time of the offences, a relationship manager with Clariden Leu Limited ("Clariden"), which has since merged with Credit Suisse AG. He faced a total of 30 charges, being 13 charges for forgery for the purpose of cheating under s 468 of the Penal Code (Cap 224) (PC), 1 charge for cheating under s 417 of the PC, and 16 charges for transferring benefits of his criminal conduct under s 47(1)(b) punishable under s 47(6) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A) (CDSA). He pleaded guilty to 8 charges, namely, 5 charges under s 468 PC and 3 CDSA charges and consented to the remaining 22 charges (comprising 8 s 468 charges, 1 s 417 charge, and 13 CDSA charges) to be taken into consideration for the purposes of sentencing (TIC charges) . The 8 proceeded charges were as follows:

(i) In DAC 20670/2013, the AP, sometime on or about 10 August 2010, in Singapore, did forge a certain document, namely, a funds transfer fax instruction for the transfer of USD 208,000 from one Feng Shuwei's account number [XXX] with Clariden to one Oversea-Chinese Banking Corporation Limited account number [XXX] in the name of Threesixfive Capital Ltd, to wit, by appending a signature purported to be made by the said Feng Shuwei on the said funds transfer fax instruction, with the intention of causing it to be believed that the said Feng Shuwei had appended the signature and intending that the said funds transfer fax instruction shall be used for the purpose of cheating Clariden, and he has thereby committed an offence punishable under s 468 PC with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

(ii) In DAC 20671/2013, the AP, sometime on or about 10 August 2010, in Singapore, did forge a certain document, namely, a funds transfer fax instruction for the transfer of USD 223,651.58 from one Sengman Tjahja's account number [XXX] with Clariden to one Clariden account number [XXX] in the name of Feng Shuwei, to wit, by appending a signature purported to be made by the said Sengman Tjahja on the said funds transfer fax instruction, with the intention of causing it to be believed that the said Sengman Tjahja had appended the signature and intending that the said funds transfer fax instruction shall be used for the purpose of cheating Clariden, and he has thereby committed an offence punishable under s 468 PC with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

(iii) In DAC 20672/2013, the AP, sometime on or about 7 February 2011, in Singapore, did forge a certain document, namely, a funds transfer fax instruction for the transfer of USD 632,000 from one Sengman Tjahja's account number [XXX] with Clariden to one Oversea-Chinese Banking Corporation Limited account number [XXX] in the name of Threesixfive Capital Ltd, to wit, by appending a signature purported to be made by the said Sengman Tjahja on the said funds transfer fax instruction, with the intention of causing it to be believed that the said Sengman Tjahja had appended the signature and intending that the said funds transfer fax instruction shall be used for the purpose of cheating Clariden, and he has thereby committed an offence punishable under s 468 PC with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

(iv) In DAC 20674/2013, the AP, sometime on or about 7 September 2011, in Singapore, did forge a certain document, namely, a funds transfer fax instruction for the transfer of SGD 220,000 from one Sengman Tjahja's account number [XXX] with Clariden to one Oversea-Chinese Banking Corporation Limited account number [XXX] in the name of Threesixfive Capital Ltd, to wit, by appending a signature purported to be made by the said Sengman Tjahja on the said funds transfer fax instruction, with the intention of causing it to be believed that the said Sengman Tjahja had appended the signature and intending that the said funds transfer fax instruction shall be used for the purpose of cheating Clariden, and he has thereby committed an offence punishable under s 468 PC with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

(v) In DAC 20676/2013, the AP, sometime on or about 6 October 2011, in Singapore, did forge a certain document, namely, a funds transfer fax instruction for the transfer of USD 180,000 from one Sengman Tjahja's account number [XXX] with Clariden to one Oversea-Chinese Banking Corporation Limited account number [XXX] in the name of Threesixfive Capital Ltd, to wit, by appending a signature purported to be made by the said Sengman Tjahja on the said funds transfer fax instruction, with the intention of causing it to be believed that the said Sengman Tjahja had appended the signature and intending that the said funds transfer fax instruction shall be used for the purpose of cheating Clariden, and he has thereby committed an offence punishable under s 468 PC with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

(vi) In DAC 20690/2013, the AP, on or about 14 March 2011, in Singapore, did transfer property, namely a sum of USD 200,000, which property in whole directly represents his benefits from criminal conduct, namely, forgery for the purpose of cheating under s 468 of the PC, when he issued an Oversea-Chinese Banking Corporation Ltd ("OCBC") cheque number 000005 from OCBC bank account number [XXX] maintained by Threesixfive Capital Ltd and deposited the said cheque into his Citibank Singapore Limited bank account number [XXX], and he has thereby committed an offence under s 47(1)(b) punishable under s 47(6) CDSA with a fine not exceeding $500,000 or to imprisonment for a term not exceeding 7 years or to both.

(vii) In DAC 20694/2013, the AP, on or about 13 September 2011, in Singapore, did transfer property, namely a sum of SGD 220,000.00, which property in whole directly represents his benefits from criminal conduct, namely, forgery for the purpose of cheating under s 468 of the PC, to wit, he issued an Oversea-Chinese Banking Corporation Ltd ("OCBC") cheque number 000052 from OCBC bank account number [XXX] maintained by Threesixfive Capital Ltd and deposited the said cheque into his Citibank Singapore Limited bank account number [XXX], and he has thereby committed an offence under s 47(1)(b) punishable under s 47(6) CDSA with a fine not exceeding $500,000 or to imprisonment for a term not exceeding 7 years or to both.

(viii) In DAC 20695/2013, the AP, on or about 10 October 2011, in Singapore, did transfer property, namely a sum of USD 180,000, which property in whole directly represents hus benefits from criminal conduct, namely, forgery for the purpose of cheating under s 468 of the PC, to wit, he caused an Oversea-Chinese Banking Corporation Ltd ("OCBC") cheque number 000012 from OCBC bank account number [XXX] maintained by Threesixfive Capital Ltd to be issued and deposited into a Clariden bank account number [XXX] maintained by Wai Lin McWhinney, and he has thereby committed an offence under s 47(1)(b) punishable under s 47(6) CDSA with a fine not exceeding $500,000 or to imprisonment for a term not exceeding 7 years or to both.

(B) Statement of Facts

2 The statement of facts (SOF) which the AP had admitted without qualification stated as follows:

"The Accused

1 The Accused is Yap Chee Yen, a 36-year old male Singaporean, and holder of NRIC No. SXXXXXXXC. At the material time of the offences, he was a relationship manager with Clariden Leu Limited ("Clariden"), which has since merged with Credit Suisse AG.

The Accused's Job Scope

2 The Accused's job responsibilities at Clariden included acquiring clients on behalf of Clariden, advising clients on investments, as well as maintaining relationship with clients.

First Information Report

3 On 11 January 2012, through its Managing Director/Head, Clariden lodged a police report at the Commercial Affairs Department of Singapore against the Accused. It was alleged that there were suspicious transfers in clients' accounts belonging to the Accused's portfolio.

The Accused's Modus Operandi in Relation to the Forgery Offences

4 Investigations revealed that **the Accused had made unauthorised funds transfers from two of his clients' accounts between 12 October 2009 and 7 October 2011. The total amount involved is USD 1,692,901.59 and SGD 371,622.00 (total of about SGD 2,487,748.99 using an exchange rate of USD1 = SGD1.25)**.

5 The two said clients are one Sengman Tjahja ("Sengman") and one Feng Shuwei ("Feng"), who held account numbers [XXX] and [XXX] respectively.

6 **The Accused prepared the unauthorised funds transfer instructions by cutting the client's signature from previous records of transfer instructions at his office work desk at Clariden. He then pasted the piece of "cut" signature onto the funds transfer instruction that he had prepared earlier. Thereafter, he faxed the funds transfer instruction from one fax machine in the office to another fax machine in the office to make the document look like an original fax instruction from the client. Then, he would pass the fax instruction to his assistant to process and approve.**

7 **The Accused was aware that he needed to make a call back to the client to confirm the funds transfer fax instructions when the amount of funds to be transferred was large. However, for these unauthorised transfers, he did not do so and proceeded to sign and acknowledge on the fax instructions that a call back confirmation to the respective clients had been done.**

8 **The Accused used the funds he had fraudulently obtained through these offences for his personal expenses, such as for the purchase of a luxury watch, purchase of a vehicle and investment in shares.**

Facts Relating to DAC 020670 of 2013 (5th Charge)

9 On or about 10 August 2010, the Accused forged a funds transfer fax instruction for the transfer of USD208,000 from Feng's account to one Oversea-Chinese Banking Corporation Limited ("OCBC") account number [XXX] in the name of Threesixfive Capital Ltd ("Threesixfive"), by appending Feng's signature to the said fax instruction.

10 The Accused did so in order to deceive Clariden into believing that the said fax instruction had been signed by Feng and subsequently allowing the transfer.

11 The Accused intended that the said fax instruction shall be used for the purpose of deceiving Clariden into believing that Feng had instructed and authorised the transfer.

12 Clariden would not have processed the transfer had it known that the fax instruction was forged and that Feng had not authorised the transfer.

13 As a result of the Accused's acts, a sum of SGD281,206 was deposited into the OCBC account of Threesixfive.

14 By his acts, the Accused had committed the offence of forgery for the purpose of cheating punishable under Section 468 of the Penal Code (Cap. 224), and is charged accordingly.

Facts Relating to DAC 020671 of 2013 (6th Charge)

15 On or about 10 August 2010, the Accused forged a funds transfer fax instruction for the transfer of USD223,651.58 from Sengman's account to Feng's account, by appending Sengman's signature to the said fax instruction.

16 The Accused did so in order to deceive Clariden into believing that the said fax instruction had been signed by Sengman and subsequently allowing the transfer.

17 The Accused intended that the said fax instruction shall be used for the purpose of deceiving Clariden into believing that Sengman had instructed and authorised the transfer.

18 Clariden would not have processed the transfer had it known that the fax instruction was forged and that Sengman had not authorised the transfer.

19 As a result of the Accused's acts, USD223,651.58 was deposited into Feng's account.

20 The Accused intended to use these funds to make up for the amount he had transferred out of Feng's account on the same day in DAC 020670 of 2013, and also to reduce/mitigate her investment losses, such intentions being unknown to Feng.

21 By his acts, the Accused had committed the offence of forgery for the purpose of cheating punishable under Section 468 of the Penal Code, and is charged accordingly.

Facts Relating to DAC 020672 of 2013 (7th Charge)

22 On or about 7 February 2011, the Accused forged a funds transfer fax instruction for the transfer of USD632,000 from Sengman's account to Threesixfive's OCBC account No. [XXX], by appending Sengman's signature to the said fax instruction.

23 The Accused did so in order to deceive Clariden into believing that the said fax instruction had been signed by Sengman and subsequently allowing the transfer.

24 The Accused intended that the said fax instruction shall be used for the purpose of deceiving Clariden into believing that Sengman had instructed and authorised the transfer.

25 Clariden would not have processed the transfer had it known that the fax instruction was forged and that Sengman had not authorised the transfer.

26 As a result of the Accused's acts, USD632,000 was deposited into Threesixfive's account.

27 **The Accused subsequently used these monies for his own investments in the stock market.**

28 By his acts, the Accused had committed the offence of forgery for the purpose of cheating punishable under Section 468 of the Penal Code, and is charged accordingly.

Facts Relating to DAC 020674 of 2013 (9th Charge)

29 On or about 7 September 2011, the Accused forged a funds transfer fax instruction for the transfer of SGD220,000 from Sengman's account to Threesixfive's OCBC account No. [XXX], by appending Sengman's signature to the said fax instruction.

30 The Accused did so in order to deceive Clariden into believing that the said fax instruction had been signed by Sengman and subsequently allowing the transfer.

31 The Accused intended that the said fax instruction shall be used for the purpose of deceiving Clariden into believing that Sengman had instructed and authorised the transfer.

32 Clariden would not have processed the transfer had it known that the fax instruction was forged and that Sengman had not authorised the transfer.

33 As a result of the Accused's acts, SGD220,000 was deposited into Threesixfive's account.

34 By his acts, the Accused had committed the offence of forgery for the purpose of cheating punishable under Section 468 of the Penal Code, and is charged accordingly.

Facts Relating to DAC 020676 of 2013 (11th Charge)

35 On or about 6 October 2011, the Accused forged a funds transfer fax instruction for the transfer of USD180,000 from Sengman's account to Threesixfive's account No. [XXX], by appending Sengman's signature to the said fax instruction.

36 The Accused did so in order to deceive Clariden into believing that the said fax instruction had been signed by Sengman and subsequently allowing the transfer.

37 The Accused intended that the said fax instruction shall be used for the purpose of deceiving Clariden into believing that Sengman had instructed and authorised the transfer.

38 Clariden would not have processed the transfer had it known that the fax instruction was forged and that Sengman had not authorised the transfer.

39 As a result of the Accused's acts, USD180,000 was deposited into Threesixfive's account.

40 The monies were transferred to the Clariden account of another client, one Wai Lin McWhinney, to reduce / mitigate her losses in authorised investments.

41 By his acts, the Accused had committed the offence of forgery for the purpose of cheating punishable under Section 468 of the Penal Code, and is charged accordingly.

Facts Relating to DAC 020690 of 2013 (25th Charge)

42 On or about 14 March 2011, the Accused caused a sum of USD200,000 to be transferred from Threesixfive's OCBC account No. [XXX] to his CitiAccess account [XXX] when he issued an OCBC cheque number 000005 from the former account and deposited it into the latter account.

43 These monies were part of the sum of USD632,000 fraudulently transferred from Sengman's account in DAC 02672-2013, and directly represented benefits from his criminal conduct.

44 The sum of USD 200,000 was used to purchase shares in the Accused's Citibank brokerage account number xxx and his father-in-law's DBS Vickers Securities account.

45 Threesixfive is a company registered in the British Virgin Islands on 5 May 2010, of which the Accused and another are both directors and beneficial owners with equal shareholding). The Accused was also an authorised signatory to the bank accounts of Threesixfive and had control over them.

46 **The Accused had used the accounts of Threesixfive to deposit the unauthorised funds transfers because he did not want Clariden to know about these unauthorised funds transfers. The Accused was mindful that if he had made the funds transfers to his own personal savings account, Clariden would know that the funds transfers were made to him as his personal savings account would bear his name as the account name.**

47 By transferring the benefits from his criminal conduct, the Accused had committed an offence under Section 47(1)(b) punishable under Section 47(6) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A) ("CDSA"), and is charged accordingly.

Facts Relating to DAC 020694 of 2013 (29th Charge)

48 On or about 13 September 2011, the Accused caused a sum of SGD220,000 to be transferred from Threesixfive's OCBC account No. [XXX] to his Citi Maxisave account No. [XXX] when he issued an OCBC cheque number 000052 from the former account and deposited it into the latter account.

49 These monies were part of the sum of SGD220,000 fraudulently transferred from Sengman's account in DAC 02674-2013, and directly represented benefits from his criminal conduct.

50 The sum of SGD220,000 was retained in the Accused's Citi Maxisave account No. [XXX].

51 By transferring the benefits from his criminal conduct, the Accused had committed an offence under Section 47(1)(b) punishable under Section 47(6) of the CDSA, and is charged accordingly.

Facts Relating to DAC 020695 of 2013 (30th Charge)

52 On or about 10 October 2011, the Accused caused a sum of USD180,000 to be transferred from Threesixfive's OCBC account No. [XXX] to the Clariden account of his client Wai Lin McWhinney, when he caused an OCBC cheque number 000012 to be issued from the former account and deposited into the latter account.

53 These monies were part of the sum of USD180,000 fraudulently transferred from Sengman's account in DAC 02676-2013, and directly represented benefits from his criminal conduct.

54 **Investigations revealed that the sum of USD180,000 was meant to reduce / mitigate losses in authorised investments that Wai Lin McWhinney suffered.**

55 By transferring the benefits from his criminal conduct, the Accused had committed an offence under Section 47(1)(b) punishable under Section 47(6) of the CDSA, and is charged accordingly." (emphasis mine)

(C) **Agreed Statement of Facts (SOF) on Sentencing Matters**

3 Both parties were given time by this Court between 13 November 2013 and 11 April 2014 to resolve some disputed issues for the purpose of sentencing and they managed to avoid a Newton hearing when they agreed on a statement of facts on sentencing matters (ASOFSM) which stated, *inter alia*, as follows:

'1 **The total amount of money fraudulently transferred from the Main Victim's account was USD1,457,651.58 plus SGD273,622.** This includes USD223,651.58 which was transferred to the Secondary Victim on 10 August 2010 (see 6th charge).

2 **The total amount of money fraudulently transferred from the Secondary Victim's account was USD235,250.01 plus SGD98,000**.

3 After factoring amounts that the Accused transferred directly or indirectly to other clients of the bank, **the net amount that was transferred from the Main Victim and Secondary Victim's accounts to accounts controlled by the Accused was USD900,000 plus SGD299,680**.

4 **The net amount that was transferred from the Main Victim and Secondary Victim's accounts to the accounts of other clients of the bank was USD584,901.59 plus SGD71,942.** This includes a net sum of USD15,651.58 that was transferred from the Main Victim to the Secondary Victim on 10 August 2010 (see 5th and 6th charges), a sum of SGD7,500 transferred from an account controlled by the Accused on 13 August 2010 (see 18th charge), a sum of SGD10,820 transferred from an account controlled by the Accused on 13 August 2010 (see 19th charge), and a sum of USD180,000 transferred from an account controlled by the Accused on 10 October 2011 (see 30th charge).

5 The client of the bank who received a total of USD330,000 from the Main Victim's account (see 11th, 13th and 30th charges) ("WLM") had raised a dispute over her account. However, the dispute was not in any way connected to the criminal charges faced by the Accused.

6 WLM has entered into a settlement with the bank. As a result, she retained USD165,000 of the USD330,000 and she paid the bank USD165,000.

7 The client of the bank who received SGD53,622 from the Main Victim's account (see 12th charge) ("SSIL") has indicated that it is willing to return the sum of SGD53,622 to the bank.

8 The other clients of the bank who received the remaining USD254,901.59 plus SGD18,320 that was transferred from the Main Victim and Secondary Victim's accounts raised various reasons why the sums received should not be returned to the bank, such reasons being not related the charges against the Accused. The bank subsequently elected not to pursue legal recovery of these sums.

9 **Of the net amount of USD900,000 plus SGD299,680 that was transferred to accounts controlled by the Accused, the Accused has made restitution in the sum of SGD369,041.18. SGD595,111 plus USD60,000 has been recovered. At the exchange rate of USD1 = SGD 1.25 adopted by the prosecution and defence in this case, there remains a shortfall of SGD385,527.82**.

10 On or about 16 January 2012, the CAD asked the Accused whether he was willing to surrender the monies in his trading accounts (including his IG Markets account ("the Trading Account)) to make restitution. The Accused was willing to do so and highlighted to the CAD that the volatility of the positions in the Trading Account could lead to margin calls and/or forced sales of the positions and as such the positions should be closed immediately to preserve the value of the funds in the Trading Account. The Accused also told CAD that some the monies in the Trading Account could have come

from his own savings. This was because the money used for the trades in the Trading Account had come from the Accused's Citibank Maxi-save account, in which both the Accused's personal savings and some of the money from the Main Victim and/or Secondary Victim had been co-mingled. The Accused was unable to provide the CAD with details of how much of the monies in the Trading Account came from his own savings and how much were from the victims. After investigating further into the source of the funds in the Trading Account, the CAD eventually decided to close the positions in the Trading Account on or about 24 February 2012, by which time the remaining funds in the Trading Account were SGD2,874.08. This amount was credited to the Accused's Citibank Maxisave account. Between 17 January 2012 and 24 February 2012, the net movement in the Trading Account was a drop of SGD241,185.59. ' (emphasis mine)

(D) Sentencing considerations

Plea of guilt and restitution

4 Our settled sentencing jurisprudence recognises that a timeously-effected plea of guilt merits a sentencing discount in certain situations. A guilty plea is relevant as a mitigation factor (a) when the plea of guilt is a genuine act of contrition and (b) when resources which would otherwise be expended at trial are saved. **The discount given may range between a quarter to a third of what would otherwise be an appropriate sentence though this is by no means either a hard and fast rule nor an entitlement. It is pertinent to note that the value of a guilty plea is substantially attenuated when (a) the plea is tactical; (b) there is no other choice but to plead guilty; and (c) where the public interest considerations nevertheless necessitate a deterrent sentence. Closely related to the plea of guilt is the act or fact of restitution:** the restoration of the status quo apropos either an accused who has been unjustly enriched or a victim who has been improperly deprived of an asset by a criminal act. Restitution can be viewed as a manifestation of contrition accompanying a genuine plea of guilt. **Restitution engendered purely by an expectation of a lighter sentence may however sometimes be coloured by the same consideration as a tactically-made plea of guilt. Restitution arising from apprehension should not be viewed as an act of contrition**.[note: 1] (emphasis mine)

Loss to the victim

5 **The fact that no or minimal loss has occurred** because the offender has been apprehended or **because the items or proceeds of crime are subsequently recovered is a relevant but not decisive factor in assessing the appropriate sentence**. The cogency of such a consideration will have to be evaluated in its proper matrix. **Almost invariably in every case of commercial fraud, it cannot be gainsaid that a serious offence has indeed been committed**. **That the loss has been minimised because of external intervention is purely fortuitous.** Apart from the actual amount involved in a credit card fraud, it should also be emphasised that a chain of parties is inevitably involved in every transaction. **Damage or loss may sometimes be intangible when it assumes the form of inconvenience, embarrassment, loss of reputation, time and costs expended in investigations as well as time, research, effort and costs involved in enhancing security measures.** Every credit card fraud, regardless of whether the money or items are eventually recovered, would cause inconvenience and some form of intangible damage to either the card holder or an involved financial institution. **General and specific deterrence must therefore feature as the vital if not dominant sentencing considerations for such offences. When considerations of public interests were implicated, the fact that no actual harm or loss was suffered by any party was of less relevance. Other factors to be considered would include, inter alia, the degree of planning and premeditation; the level of sophistication and measures taken to defy detection; the role of the accused; the number of offences and quantum involved; the actual loss and damage; and the plea of guilt**.[note: 2] (emphasis mine)

6 **Specific deterrence is usually appropriate in instances where the crime is pre-meditated, that is, where there has been a conscious choice to commit the crime**. **General deterrence**, on the other hand, aims to educate and deter other like-minded members of the general public by making an example of a particular offender and **would assume significance and relevance where the offences involve corporate integrity/abuse of authority and/or affect the delivery of financial services and/or the integrity of the economic infrastructure**.[note: 3] (emphasis mine)

s 468 PC offence

7 Imprisonment is mandatory for a s 468 offence which may extend to 10 years and the actual length of imprisonment would depend on: (a) The manner in which the offence was committed; (b) The value of property or loss involved; (c) The offender's position in an organisation; (d) The degree of trust reposed in the offender; (e) The period over which the offences were committed; (f) The number of offences committed; and (g) The level of planning and organisation in the execution of the offence.[note: 4] The aggravating factors for a s 468 offence are as follows: (a) Multiple charges involved; (b) Multiple victims involved; (c) Premeditated offences; (d) Professionalism; (e) Offences affect financial system or commercial integrity of Singapore; (f)Large amount involved; and (g) Offences committed over a period of time.[note: 5]

s 47(1)(b) CDSA offence

8 The sentencing considerations for a s 47(1)(b) CDSA offence include the severity of the underlying offence and the offender having actual knowledge that the assets were the benefits of criminal conduct.[note: 6]

(E) Sentencing precedents

s 468 PC offence

9 Offences under s 468 PC have always been treated seriously and past cases show that a benchmark of 12 months' imprisonment has been adopted.[note: 7] Subject to distinguishing factors, based on sentencing precedents cited by the parties involving bank relationship managers or bank officers where little or no restitution has been made, the sentencing range for a s 468 PC offence for amounts between **USD 1, 250 to USD 62,000 appears to be between 4 to 18 months' imprisonment**.[note: 8]

s 47(1)(b) CDSA offence

10 Subject to distinguishing factors, based on sentencing precedents cited by the parties involving bank relationship managers or bank officers where little or no restitution has been made, the sentencing range or benchmark for a s 47(1)(b) CDSA offence appears to be as follows:

(i) **For amounts between SGD100,000 to SGD 250,000, the sentencing range is between 8 to 12 months' imprisonment**.[note: 9]

(ii) **For amounts between SGD13,000 to SGD50,000, the sentencing benchmark is between 6 to 12 months' imprisonment**.[note: 10]

Global sentence

11 Subject to distinguishing factors, based on sentencing precedents cited by the parties involving bank relationship managers or bank officers where the offenders faced multiple charges under s 381, 408, 420, 467, 468 and/or 471 PC offences and/or CDSA offences involving large amounts of money with little or no restitution been made (unless otherwise mentioned below), **the sentencing range for a global sentence appears to be between 8 months and 7 years for a total loss amount of between SGD250,000 and SGD4. 9 million** as can be seen from the following cases:

(i) 8 months' imprisonment has been on an offender where the total loss amount involved was approximately SGD250,000.[note: 11]

(ii) 54 months' imprisonment has been on an offender where the total amount of financial loss was SGD262,933.01 with restitution in the sum of SGD206,166.33.[note: 12]

(iii) 4 years' imprisonment has been imposed on an offender where the total loss amount involved was SGD348,841.62.[note: 13]

(iv) 21 months' imprisonment has been on an offender where the bank suffered a total loss of SGD454,162.44.[note: 14]

(v) 74 months' imprisonment has been on an offender where the total loss amount involved was SGD756,949.37.[note: 15]

(vi) 3 years imprisonment has been imposed on an offender where the total loss amount involved was S$924,942.00.[note: 16]

(vii) 5 years' imprisonment has been on an offender where the total loss amount involved was SGD963,536.[note: 17]

(viii) 5 years 6 months' imprisonment has been imposed on an offender where the total loss amount involved was S$1.7 million.[note: 18]

(ix) 7 years 6 months' imprisonment has been imposed on an offender where the total loss amount involved was about SGD 1.9 million.[note: 19]

(x) 8 years 6 months' imprisonment has been imposed on an offender where the total loss amount involved was SGD2,135,800.[note: 20]

(xi) 7 years' imprisonment has been imposed on an offender where the total loss amount involved was nearly SGD4.9 million with a mere S$66,234.02 in restitution.[note: 21]

(xii) 12 years imprisonment has been imposed on an offender where the total net loss amount involved was USD 5.6 million.[note: 22]

(xiii) 5 years' imprisonment has been on an offender where the amount involved was SGD7.4 million with restitution made and the amount unaccounted for/ not recovered was SGD 307,538.[note: 23]

(F) Aggravating factors

12 I agreed with the prosecution that the following were the aggravating factors in our present case:

(i) Our present case falls within the categories of offences identified by the High Court as warranting general deterrence[note: 24]. By virtue of the AP's position as a relationship manager of a bank, there had been a great degree of trust and authority reposed in him which he had abused on numerous occasions. The unauthorised transfers also involved a large total sum of about SGD 2,487,748.99. By his acts, the AP had exploited the trust reposed in him by the clients, as well as his employer bank and his offences also affect financial system or commercial integrity of Singapore, in that they affect the delivery of financial services.

(ii) The forgery offences committed by the AP spanned a period of 2 years from October 2009 to October 2011. The AP's repeated acts over the aforesaid period of 2 years show his persistence in engaging in such criminal conduct and indicate a lack of remorse. This is definitely not a case of an isolated indiscretion or a momentary lapse of judgment on the AP's part. There had been a significant degree of premeditation involved, contrary to the Defence submission that the monies were transferred in a haphazard fashion over a period to time and not on a systematic schedule. Over this period, he forged his clients' signatures on 13 occasions, causing a total sum of about SGD 2,487,748.99 to be transferred from clients' accounts. On each occasion, the AP had prepared the unauthorised funds transfer instructions by cutting the client's signature from previous records of transfer instructions at his office work desk. He then pasted the piece of "cut" signature onto the funds transfer instruction that he had prepared earlier. Thereafter, he faxed the funds transfer instruction from one fax machine in the office to another fax machine in the office to make the document look like an original fax instruction from the client. Then, he would pass the fax instruction to his assistant for process and approval. The AP was also aware that he needed to make a call back to the client to confirm the funds transfer fax instructions

when the amount of funds to be transferred was large. However, for these unauthorised transfers, he did not do so and proceeded to sign and acknowledge on the fax instructions that a call back confirmation to the respective clients had been done. It is well established that the period of time over which the offences are committed is an important sentencing consideration.[note: 25]

(iii) The CDSA offences committed by the AP were likewise numerous and committed over a period from March 2010 to October 2011. The total amount involved was substantial at USD812,000 plus SGD599,191. He clearly knew that the monies he had transferred were benefits of his offences of forgery, which were serious offences. He had attempted to conceal the forgery offences he had committed. He had used the accounts of Threesixfive Capital Ltd to deposit the unauthorised funds transfers because he did not want his employer bank to know about these unauthorised funds transfers. The AP was mindful that if he had made the funds transfers to his own personal savings account, his employers would know that the funds transfers were made to him as his personal savings account would bear his name as the account name. Ultimately, he had used some of the funds he had fraudulently obtained through these offences for his personal expenses, such as for the purchase of a luxury watch, purchase of a vehicle and investment in shares.

(iv) The AP had committed the offence of forgery for the purpose of cheating, which is a serious offence, on not one, but multiple occasions. As a trusted officer of the bank – trusted by both his employer and his customers – the AP had used the accounts of the Main Victim and Secondary Victim freely, as if they were his own. He had misused millions of clients' funds without their consent for his own benefit. The AP faced multiple charges with multiple victims with large amounts of money involved.

(v) While the AP had cooperated with the police, pleaded guilty at the earliest possible opportunity and had never contested the charges, little weight should be given to such mitigating factors, in view of the seriousness of the AP's offences and the degree of likelihood of that guilt being discovered by the law enforcement agencies. Basically, the law is that voluntary surrender has no mitigating value if the offender had no other choice[note: 26]. In fact, the AP had not turned himself in to the police. He had been subject to internal investigation by his employers, Clariden. The AP did not admit his offences to Clariden, which would have been the first available opportunity for him to express his remorse (if any). Investigations revealed that Clariden had interviewed the AP on 13 January 2012. Not only did he fail to admit to conducting unauthorised transfers in his clients' account, he further claimed that Threesixfive Capital Ltd ("Threesixfive") was a Forex broker that the Main Victim and Secondary Victim used and it is located in Jakarta. The AP claimed that he did not have any relationship with ThreeSixFive, and that the Main and Secondary Victims had sent monies to ThreeSixFive to cover their collateral requirements. When asked whether the Main and Secondary Victims knew each other, the AP replied that they probably knew each other through the broker at ThreeSixFive. As for the transfers from the Main Victim to the Secondary Victim, the AP asked Clariden to ask the clients. Clariden also mentioned to the AP that the Main Victim claimed that he did not sign the instructions to transfer to the clients concerned (including Secondary Victim and others) or ThreeSixFive, and asked AP to explain. The AP asked Clariden to ask the client again.

(G) Court's reasons for the sentence

Proper sentencing approach

13 The proper sentencing approach in a case involving multiple offences must be a two-stage one. First, the sentences for the individual offences must be determined. After that, the court must then "[step] back and take a holistic perspective in order to determine which sentences should be ordered to run consecutively to make for an appropriate global sentence". The purpose is to allow the court to "properly comprehend the overall criminality of the multiple offender".[note: 27] At the same time, it must be noted that "the primary consideration in cases involving multiple charges is the totality of the sentence" as the number of individual charges brought is ultimately a matter of "circumstance and discretion".[note: 28]

14 I have carefully considered all the written and further submissions and replies filed by both parties after the ASOFSM was agreed between them in April 2014 as well as the AP's mitigation letter dated 12 May 2014. On the various sentencing precedents cited by both parties, I noted as follows:

(i) Some of the above sentencing precedents cited by the parties were unreported cases. [note: 29]I had to bear in mind the warning given by the High Court against relying on unreported decisions indiscriminately in determining the appropriate sentence for the particular case before the court since the detailed facts and circumstances of these cases

were hardly disclosed or documented with sufficient clarity to enable any intelligent comparison to be made. Further, comparisons based on unreported decisions are difficult and are likely to be misleading because a proper appraisal of the particular facts and circumstances is simply lacking[note: 30].

(ii) More generally, the Court must bear in mind at all times that "while past cases (and benchmark sentences) are clearly helpful in providing guidelines for the court, they must be acknowledged as just that and no more"[note: 31] as the sentence must fit the particular crime in every individual case rather than be based on mechanical application of similar past cases[note: 32].

(iii) The sentences "do not bear a relationship of linear proportionality with the sums involved"[note: 33]. Thus, in any two similar cases, the sentences might be the same even if the amounts involved are different. Apart from the aggravating and mitigating factors of each case, this may well explain the different global sentences imposed in the sentencing precedents in [11] above, wherein 7 years' imprisonment has been imposed on an offender where the total loss amount involved was nearly SGD4.9 million with a mere S$66,234.02 in restitution[note: 34] and 12 years imprisonment has been imposed on an offender where the total net loss amount involved was USD 5.6 million[note: 35].

15 I accepted the Defence submission that the AP did not commit the present offences as part of a syndicate or carefully organised crime operation. He did not misappropriate government funds. He did not target vulnerable victims like the elderly, nor did he have any similar antecedents. He was remorseful and had chosen to be remanded since he was charged and has never intended to contest the charges because he wanted to come clean with his actions and wanted to plead guilty at the earliest opportunity, which he has since done. Since his arrest in January 2012, and throughout the investigation period, up till the time when he was charged in Court in June 2013, the AP fully cooperated with the authorities. He has been forthcoming and pro-active in offering information to the authorities about what he did and this has saved the investigators a substantial amount of time and eased the amount of information which the Victims have had to spend for investigations.

Need for deterrent sentence

16 Nevertheless, based on the sentencing considerations in [4] to [6] above, I took the view that given the serious nature of the AP's present offences involving corporate integrity/abuse of authority and/or affect the delivery of financial services and/or the integrity of the economic infrastructure, the public interest considerations necessitate a specific and general deterrent sentence. Further, even if no or minimal loss has occurred because the items or proceeds of crime are subsequently recovered and/or returned substantially to the victim(s) concerned, this will be a relevant but not decisive factor in assessing the appropriate sentence. The cogency of such a consideration will have to be evaluated in its proper matrix. Almost invariably in every case of commercial fraud, it cannot be gainsaid that a serious offence has indeed been committed. That the loss has been minimised because of external intervention or any other reason is purely fortuitous. Damage or loss may sometimes be intangible when it assumes the form of inconvenience, embarrassment, loss of reputation, time and costs expended in investigations as well as time, research, effort and costs involved in enhancing security measures for the financial institution concerned. Hence, I took the view that the total amount involved of about SGD 2,487,748.99 should be taken into account in determining the appropriate sentence to be imposed on the AP in our present case, with little or no credit to be given to the amount recovered or restitution or profits made for the AP's clients, regardless of the amount recovered or restitution or profit made. Further, as explained in [19] to [25] below, the loss caused by the AP's offences is not 'notional' as his employer, Clariden was the true victim of his offences and had suffered a loss of SGD1,948,311.98.

17 On the issue of amount recovered, restitution and profit made, I agreed with the Prosecution that :

(i) The AP should not be given any credit for assets recovered by the CAD. The AP had indicated that he was willing to surrender his assets to make restitution only when his statement was recorded by CAD, by which time, he was aware or would have been aware that the proceeds of his crimes have been seized or would be seized by CAD. Clearly, the AP had missed the first opportunity for him to express remorse by offering to make restitution when he was first investigated by his employers, Clariden. Subsequently, when the AP agreed to make restitution, he did not have much of a choice. Restitution arising from apprehension should not be viewed as an act of contrition.[note: 36]

(ii) On the restitution made by the AP leaving a shortfall of SGD385,527.82, it is trite law that where the sole motive for restitution is not genuine remorse made voluntarily before the commencement of criminal proceedings or in its earliest stages, but in the hope or expectation of obtaining a lighter sentence, the fact of restitution is of little mitigating

value.[note: 37]

(iii) There is no merit in the Defence submission on the CAD's failure to accept the AP's advice to close the Trading Account to make further restitution (as early as the 16 January 2012 interview, where he had detailed to the CAD the forex positions that he had taken at that time) which would have led to a further SGD241,185.59 worth of monies been recovered. The Defence conceded that the CAD did not act with malice or extreme negligence and had apparently wanted to investigate the source of funds in the Trading Account first, before deciding what to do with it, as the AP was himself unable to provide details and confirm how much of his own personal funds were in the Trading Account. In my view, the CAD had acted lawfully in relation to the closure of the Trading Account and there is therefore no merit in the Defence submission that the loss attributable to the AP for sentencing purposes should be SGD144,342.23 (i.e. SGD385,527.82 - SGD241,185.59) as a further SGD241,185.59 worth of monies could have been recovered if CAD had accepted the AP's aforesaid advice.

(iv) There is also no merit in the Defence submission for this Court to regard as mitigating factors that the AP had claimed no credit when he made some USD3.35 million for the Main Victim without his knowledge through unauthorised trades and also the Secondary Victim for whom the AP had inadvertently saved moneys for her because the AP did not execute an investment instruction for her which otherwise would have turned out to be a loss. That profit had been made for the Main Victim and loss had been minimised for the Secondary Victim were purely fortuitous. Further, not all the profits made went towards the Main Victim and the AP never made it known to the Main Victim that he had generated profits for him. To the contrary, the AP had concealed the unauthorised trades conducted in the Main Victim's account from the Main Victim – the subject matter of the 14th Charge against the AP. Clearly, the motivations behind the AP's offences were not as altruistic as he had made them out to be. The fact that the AP did not make it known to the Main Victim that he had generated profits for him suggested that he never intended to let the Main Victim retain these profits.

(v) As regards the Defence submission that the AP had transferred some of the monies from the Secondary Victim's account to cover other customers' losses as he felt that these customers assets' with Clariden were important to them and he genuinely wanted to help them, it is trite law that spending proceeds of crime on others in need is not a mitigating factor and the fact that someone who has dishonestly obtained money by forgery or criminal breach of trust or other crime then goes on to indulge friends and relatives in an extravagant lifestyle, can never be a mitigating factor. [note: 38]

(vi) As for the AP's claims that he treated his customers as his friends (and had even made good some of their investment losses using the gains in the Main Victim's account which were also fortuitous), this could be regarded as an aggravating factor as intimate human relationships such as friendships are based on trust and an abuse of one's position of trust and friendship should be taken seriously.[note: 39]

18 I agreed with the Prosecution that the altruistic motivations that the AP claimed were behind his commission of the offences should be doubted based on the following :

(i) The AP had admitted to the CAD he had transferred money to the First Beneficiary's account to repay her for losses of USD330,000 arising from the default of a bond. The AP had told the First Beneficiary that the bond had been redeemed in full and the amount of USD330,000 had been credited into her account. The AP further admitted he could not tell the First Beneficiary and her husband about the bond default as he was worried that he might be terminated by the bank if her husband pursued the matter.

(ii) The Second and Third Beneficiaries had discovered that before the unauthorised transfer of USD130,000 on 29 March 2010 to his account, the AP had conducted unauthorised trades in their account in 2009 and 2010 which resulted in losses and they had complained to Clariden.

(iii) The AP had also admitted to the CAD that the holder of the beneficiary account for the 1st and 2nd charges had been aware that his investment would not pay out the sum amounting to USD27,250.01 but he insisted on receiving the coupon payment. That was why the AP transferred the amounts of USD14,000 and USD13,250.01 from the Secondary Victim's account to him on 12 October 2009 and 4 December 2009 respectively.

(iv) the first unauthorised transfer made for the AP's personal benefit had taken place on 10 March 2010 – This was the transfer of S$98,000 from the Secondary Victim's account to the AP's Citi Maxisave account on 16 March 2010, for the AP's own use. This was relatively early during the offence period and showed that the AP already had the intention to misappropriate monies dishonestly. A total of 4 out of the 13 unauthorised transactions had been made for the AP's own benefit. Another 2 were purportedly intended to be transferred to his clients but the monies were eventually used for his own stock investments or remained in his personal account. This meant that about half of the unauthorised transfers were for the AP's own benefit. The total amount of monies that were ultimately applied to the AP's own use was SGD1,415,976, whilst SGD832,963.99 was transferred into other customers' accounts. These amounts represented wrongful gains to the AP himself and others.

(v) I also noted from the AP's own mitigation letter that while his original intention was to help the Main Victim recoup his losses suffered in the global financial crisis, he succumbed to greed and had taken some of the moneys for himself.

19 Although both parties were unable to agree on whether the loss suffered by the AP's employer, Clariden as a result of (a) its settlements with the Main Victim and Secondary Victim, and (b) its inability to recover the monies fraudulently transferred to some of its customers should be attributable to the AP, I accepted the Prosecution submission that the loss that is attributable to the AP is an issue of law with no ancillary or Newton hearing required because it is not disputed that the dispute raised by Wai Lin McWhinney (WLM) over her account which led to Clariden allowing her to retain USD165,000 was not in any way connected to the charges faced by the AP (Paragraph 5 of the ASOFSM). It is also not disputed that the other clients had raised various reasons why the sums received should not be returned to Clariden, and such reasons were not related to the charges against the AP. The true victim of the AP's offences is Clariden as the AP's employer. Clariden has elected not to pursue legal recovery of these sums. Linked to the issue of loss attributable to the AP, the amounts which Clariden paid to the Main Victim and Secondary Victim were as follows:

(i) The total amount of money fraudulently transferred from the account of Sengman Tjahja ("the Main Victim") account was **USD1,457,651.58 plus SGD273,622**. This includes USD223,651.58 which was transferred to Feng Shuwei ("the Secondary Victim") on 10 August 2010 (see 6th charge). The total amount fraudulently transferred from the Secondary Victim's account was USD 235,250 plus SGD 98,000. There was also a transfer into the Secondary Victim's account of USD 223,652 from the Main Victim. As settlement, Clariden paid the Secondary Victim USD 11,598 (being USD235,250 minus USD223,652) and SGD 113,500 (being SGD98,000 plus SGD15,500, the latter sum of SGD15,500 being not related to the present charges against the AP).

(ii) With regard to the Main Victim, the total amount fraudulently transferred from his account was USD1,457,651.58 plus SGD273,622 (about SGD2,095,686.48), whilst Clariden's payment to him amounted to USD2,000,000 (about SGD2,500,000). Apart from the fraudulent transfers, the Main Victim also raised other disputes relating to his accounts which concerned the AP. The Prosecution does not have the full details of these other disputes save that they are not related to the present charges against the AP. Clariden entered into a settlement with the Main Victim in respect of the fraudulent transfers and these other disputes for the sum of USD2,000,000.

20 In view of (i) and (ii) above, I accepted the Prosecution submission that the net loss suffered by Clariden is as follows:

(a) Total amount of money fraudulently transferred from the Main Victim's account	USD1,457,651.58 plus SGD273,622	
(b) Total amount of money fraudulently transferred from the Secondary Victim's account	USD235,250.01 plus SGD98,000	
	<u>Payouts by Clariden</u>	<u>Monies returned to Clariden</u>
(c) Total amount Clariden paid out to the Main Victim *in connection with the charges against the AP*	*SGD2,095,686.48* (being total amount of USD2,000,000[note: 40] actually paid out minus SGD404,313.52 paid out not in relation to the charges against the AP)	

(d) Total amount Clariden paid out to the Secondary Victim *in connection with the charges against the AP*	*USD11,598 plus SGD98,000* (being total amount of USD11,598 plus SGD113,500 actually paid out minus SGD15,500 paid out not in relation to the charges against the AP)	
(e) *Total amount Clariden paid out to the Main Victim and Secondary Victim*	*USD2,011,598 plus SGD113,500*	
(f) Total amount already returned from recipient accounts to Clariden to date		(USD165,000)
(g) Total amount in Clariden's possession which may potentially be returned to Clariden		(SGD53,622)
(h) **Nett loss suffered by Clariden**	***SGD1,948,311.98*** (based on USD1 = SGD1.25)	

21 Contrary to the Defence submission that the loss caused by the AP in our present case is only 'notional' since the loss had arisen from surplus monies in the Main Victim's account, I accepted the Prosecution submission that the monies transferred from the accounts of the Main Victim and the Secondary Victim were wrongful gains by the AP (whether he or a third party benefitted from the fraudulent transfers). The victim customers in the AP's case did suffer wrongful loss. Their loss should be defined as the amount which would have been in their accounts but for the fraudulent transfers conducted by the AP. The AP should not be entitled to have his unauthorised trades/failure to execute an unprofitable investment instruction viewed as part of the same transaction with his fraudulent transfers. This is because when the AP conducted the unauthorised trades and/or failed to execute the unprofitable investment instruction, he did not and could not have within his contemplation what he would do with the profits generated. He could not have known for sure that the unauthorised trades in the Main Victim's account would result in a substantial amount of profit and the failure to execute the Secondary Victim's instruction would avoid loss. Essentially, the unauthorised trades and failure to execute the investment instruction were separate transactions, the result of which, should be considered separately. They were not part of the offences of forgery committed by the AP. If the AP had not committed the forgery offences, the monies would have continued to reside in the respective victim customers' accounts. Therefore, when measuring the position of the victim customers, each of their loss should be quantified as the amount which would have been in their accounts but for the fraudulent transfers conducted by the AP.

22 Even if the Defence submission that the victim customers had suffered only 'notional' 'loss' is accepted by this Court and this Court agreed with the Defence that there had been no loss caused by the AP's offences, the fact that there was no loss suffered by the victim(s) is a legitimate mitigating factor, but should carry little or no weight at all. This is because when considerations of public interests were involved, as in our present case where the AP's offences were serious and involved abuse of authority and trust as well as corporate integrity and/or affect the delivery of financial series and/or the integrity of the economic infrastructure, the fact that no harm or loss was suffered by any party is of less relevance or importance.[note: 41] Further, the extent of harm caused by the AP's crimes is to be balanced against other sentencing factors such as whether the acts were committed after deliberation and premeditation and whether there was an abuse of trust[note: 42]. Moreover, the offences committed by the AP (essentially white-collar crimes) could adversely affect Singapore's international standing and deterrence should be the primary sentencing objective as the Courts have taken a tough stance against offenders of white-collar crimes to ensure that the punishment imposed on them adequately addresses the harm caused by the offences[note: 43].

23 As the victim is Clariden which is a bank, it is trite law that once money deposited by a customer is paid over to a bank, the money belongs to the bank[note: 44]. As a result of the AP's offences, his employer, Clariden, has had to enter into settlement agreements with the Main Victim and the Secondary Victim, thereby incurring a loss. The net amount that was transferred from the Main Victim and Secondary Victim's accounts to the accounts of other clients of the bank was **USD584,901.59 plus SGD71,942**. This includes a net sum of USD15,651.58 that was transferred from the Main Victim to the Secondary Victim on 10 August 2010 (see 5th and 6th charges), a sum of SGD7,500 transferred from an account controlled by the AP on 13 August 2010 (see 18th charge), a sum of SGD10,820 transferred from an account controlled by the AP on 13 August 2010 (see 19th charge), and a sum of USD180,000 transferred from an account controlled by the AP on 10 October 2011 (see 30th charge).

24 The client who received a total of USD330,000 from the Main Victim's account (see 11th, 13th and 30th charges) had raised a dispute over her account, notwithstanding the dispute was not connected to the criminal charges faced by the AP. She entered into a settlement with Clariden, under which she retained USD165,000 of the USD330,000 and paid Clariden USD165,000. The client who received SGD53,622 from the Main Victim's account (see 12th charge) has indicated that it is willing to return the sum of SGD53,622 to the bank.

Beyond the aforesaid amounts recovered, Clariden's endeavours to recover the monies that had been fraudulently transferred to other clients' accounts by the AP were not successful. The other clients of Clariden who received the remaining USD254,901.59 plus SGD18,320 that was transferred from the Main Victim and Secondary Victim's accounts raised various reasons why the sums received should not be returned to Clariden, such reasons being not related the present charges against the AP. Clariden subsequently elected not to pursue legal recovery of these sums. I accepted the prosecution submission that in criminal proceedings, a victim of crime (as Clariden is in this case) does not have a duty to mitigate the loss caused to it by the AP[note: 45] when Clariden only recovered a sum of USD165,000 and SGD53,622 and chose not to pursue legal recovery of the balance sums. I therefore see no merit in the Defence submission not to attribute to the AP for sentencing purposes the loss of the aforesaid balance sums which Clariden chose not to pursue legal recovery and rejected the Defence submission that if Clariden elected of its own accord not to pursue legal recovery of the amounts that were given to the Beneficiaries (including WLM) for reasons not related to the charges faced by the AP, then Clariden has clearly opted to bear the loss on its own. In my view, it was entirely irrelevant to our present criminal proceedings against the AP and purely speculative for the Defence to suggest the outcomes of any possible civil suits which may be brought by Clariden against the AP in respect of the aforesaid balance sums and by the AP against the CAD to indemnify him for the sum of SGD241,185.49, being the depreciation in value of the funds in the Trading Account.

25 Further, the criminal law does hold an offender accountable for harm caused which is greater than that intended by the offender and the touchstone appears to be the 'foreseeability' of such harm.[note: 46] In this regard, I agreed with the Prosecution submission that the losses caused to Clariden in this case were clearly foreseeable by the AP when he misconducted himself as an agent of Clariden and it certainly cannot lie in his mouth to argue that he did not foresee that his employer would have to step in to placate the affected clients, especially since honesty, credibility and reputation are touchstones of a financial institution.

26 While the AP has no prior criminal record, the forgery offences committed by the AP spanned a period of 2 years from October 2009 to October 2011 and it is trite law that a clean record carries hardly any mitigating force when an offender is convicted of a string of offences committed over a spectrum of time. This is because all it means is that the offender was fortunate not to have been caught by the law earlier.[note: 47] There is also no merit in the Defence submission that the financial, mental and emotional stress which the AP had suffered during the period of investigation before been charged for the present offences (as well as the impending civil suits against him mentioned in the AP's own mitigation letter) has already been a punishment to him as such stress was entirely self-induced brought by the AP upon himself through his commission of these offences.

27 I gave no weight to the Main Victim's forgiveness and plea for leniency for the AP as it is trite law that there is little place for such forgiveness in the field of criminal law which punishes offenders on the basis that they have committed criminal acts against the State and such forgiveness bears no relation to an offender's liability for punishment and hence should not impinge on the sentence to be passed by the court. This is because our present case does not fall within the concept of restorative justice which focuses on the well-being of the immediate parties affected by the offence (rather than that of society as a whole) and seeks to restore familial or social relationship between the victim and the offender which had been broken or damaged by the offence committed by the latter and the victim's forgiveness of the offender may bring about their reconciliation.[note: 48] The letter from the Main Victim seeking forgiveness and plea for leniency for the AP cannot be regarded as a victim impact statement as it is not called for by the Prosecution or the Court and even for victim impact statements adduced by the Prosecution in its address on sentence, the legal position is that other than the harm suffered by the victim, the court will not consider or give any weight to any comments or suggestions by the victim as to the appropriate sentence to be imposed.[note: 49]

28 I agreed with the Prosecution submission that that the AP is the author of his own misfortune and his loss of employment which arose out of his abuse of position or trust should not be regarded as a mitigating factor.[note: 50] Further, as for the Defence submission that the AP's family consisting of his wife, his two young daughters and two aged parents, relied on him financially and they had to adapt and make adjustments to their lifestyle and standard of living in order to make ends meet,

hardship to an offender's family is not normally a circumstance which will be taken into account for the purposes of sentencing as the Courts will not normally mitigate a sentence on the ground that the offender's family will suffer because this is regarded as a normal concomitant of imprisonment.[note: 51]

29 As regards the Defence submission that the CDSA charges that arose in the AP's case were part and parcel of the entire case and should be treated as arising from the same transaction as the s 468 charges, I accepted the Prosecution submission that each of the forgery offences for the purpose of cheating ends when the forgery is completed. As a result of the AP's forgery, funds are transferred into desired accounts, as indicated by the AP. The Prosecution did not charge the AP for this transfer. The Prosecution had charged the AP for the second transfer, when he transferred the funds from the initial beneficiary account into a further beneficial account. There is absolutely no overlap in the charges. The fact that the CDSA charges are distinct from the forgery charges is supported by the fact that the periods between the forgery and CDSA offences ranged from days to months. There is therefore no proximity of time. Neither is there continuity of action.

30 A for the Defence submission that some of the CDSA charges preferred against the AP involved transferring money from accounts he controlled to other Clariden customers' bank accounts, and that whilst these are technically CDSA offences, they are quite different conceptually from conventional money laundering, I agreed with the Prosecution submission that the AP had admitted in the SOF his reasons for using the account of Threesixfive Capital Ltd to conduct the transfers – He wanted to conceal his forgery offences. He wanted to make his criminal proceeds difficult to be traced. As admitted by the AP, Threesixfive is a company registered in the British Virgin Islands on 5 May 2010, of which the AP and another are both directors and beneficial owners with equal shareholding. The AP was also an authorised signatory to the bank accounts of Threesixfive and had control over them. He had used the accounts of Threesixfive to deposit the unauthorised funds transfers because he did not want Clariden to know about these unauthorised funds transfers. He was mindful that if he had made the funds transfers to his own personal savings account, Clariden would know that the funds transfers were made to him as his personal savings account would bear his name as the account name. The fact that Threesixfive was registered in the BVI allowed the AP to hide his relationship to Threesixfive. This is further evidence of the AP's premeditation and scheming mind in his commission of the current offences which warranted a deterrent sentence to be imposed on him in our present case.

Sentence for each proceeded charge

31 Using as a guide the above sentencing precedents[note: 52] where the sentencing range for a s 468 PC offence for amounts between USD 1, 250 to USD 62,000 appears to be between 4 to 18 months' imprisonment and for a s 47(1)(b) CDSA offence for amounts between SGD100,000 to SGD 250,000, the sentencing range is between 8 to 12 months' imprisonment, I took the view that it would be appropriate to sentence the AP for each proceeded charge as follows:

Charge Numbers:	**Imprisonment Terms**
DAC 20670/2013 (s468)(USD208K) (SGD281,206)	14 mths
DAC 20671/2013 **(s468)(USD223,651.58)**	**14 mths**
DAC 20672/2013 **(s468)(USD632K)**	**40 mths**
DAC 20674/2013 (s468)(SGD220K)	12 mths
DAC 20676/2013 (s468)(USD180K)	12 mths

DAC 20690/2013 (s47(1)(b) CDSA) (USD200K)	12 mths
DAC 20694/2013 (s47(1)(b) CDSA) (SGD220K)	12 mths
DAC 20695/2013 **(s47(1)(b) CDSA)** **(USD180K)**	**12 mths**

Global sentence

32 Having regard to the above sentencing considerations and precedents as well as the aggravating factors in our present case, I was unable to accept the Defence submission for a global imprisonment term of 2 years to be imposed on the AP which would, in my view, be manifestly inadequate and was totally unsupported by any sentencing precedent involving a total amount of about SGD 2,487,748.99 as well as a loss of SGD1,948,311.98 suffered by Clariden as the victim. I noted from the submissions of both parties that the sentencing precedents cited and relied by the Defence for its submission of a global sentence of 2 years may be distinguished as follows:

(i) *PP v Yap Lip Yeong (MA 352/93/01)* where the offender was sentenced to 3 years imprisonment may be distinguished on the following grounds:

(a) The total loss amount was SGD924,942 as compared to the total amount of about SGD 2,487,748.99 involved in our present case with a loss of SGD1,948,311.98 suffered by Clariden as the victim.

(b) The 8 charges faced by the offender in that case was less than the 30 charges faced by the AP in our present case.

(c) All the 8 charges faced by the offender were cheating charges under s 420 PC whereas the AP in our present case faced 30 charges comprising 13 charges for forgery for the purpose of cheating under s 468 PC, 1 charge for cheating under s 417 PC and 16 charges for transferring benefits of his criminal conduct under s 47(1)(b) punishable under s 47(6) of the CDSA.

(d) Other than the amount involved in the 8 charges and the offender's modus operandi where as a Vice – President of the bank, he had instructed the dealers in the bank's dealing room to execute certain foreign exchange transactions for the order of several private banking customers under his charge when these customers had not authorised these deals, the aggravating and mitigating factors are not at all clear from the summary of the case (as stated in the *Sentencing Practice in the Subordinate Courts (Third Edition, 2013) at pp 878-879*) and it was difficult to ascertain the Court's reasons for the sentence imposed on the offender without its full grounds of decision.

(ii) *PP v Alvin Lim Yuh Haw (DAC 20731 of 2010 & Others)* where the offender was sentenced to 21 months' imprisonment for the 3 proceeded charges with a total loss amount of SGD454,162.44 may be distinguished on the following grounds:

(a) The total amount involved was SGD604,162.44 as compared to the total amount of about SGD 2,487,748.99 involved in our present case with a loss of SGD1,948,311.98 suffered by Clariden as the victim.

(b) The offender in that case faced only 9 charges comprising 3 charges under s 420 PC, 2 charges under s 468 PC and 4 charges under s 465 PC whereas the AP in our present case faced 30 charges comprising 13 charges for forgery for the purpose of cheating under s 468 PC, 1 charge for cheating under s 417 PC and 16 charges for transferring benefits of his criminal conduct under s 47(1)(b) punishable under s 47(6) of the CDSA.

(c) All of the offences were committed in *Alvin Lim Yuh Haw* for his own selfish soccer betting purposes. In contrast, the AP transferred about 1/3 of the transferred monies to other clients to help them with their losses sustained in the global financial crisis of 2008. The AP also faced more charges and overall, the AP's case is more serious than that of *Alvin Lim Yuh Haw*. But it is trite law that spending proceeds of crime on others in need is not a mitigating factor and the fact that someone who has dishonestly obtained money by forgery or criminal breach of trust or other crime then goes on to indulge friends and relatives in an extravagant lifestyle, can never be a mitigating factor.[note: 53]

33 The Prosecution had submitted for a global sentence of not less than 6 years' imprisonment based on the following sentencing precedents involving offenders who were also officers of banks or relationship managers and had committed the forgery/cheating offences in the course of their employment/duties as officers of their respective banks and which showed that the Courts take a tough stance on relationship managers who misconduct themselves:

(i) *PP v Tan Wei Chong (DAC No. 018217 of 2011 & others)*

(a) The total amount involved at SGD3.6 million plus EUD88,122.28 with a total loss of SGD4,803,765.98 plus EUD88,122.28 with no restitution or recovery is more than the total amount of about SGD 2,487,748.99 involved in our present case with a loss of SGD1,948,311.98 suffered by Clariden as the victim. Both cases involved multiple offences where the AP in our present case committed no less than 30 offences while the offender in *Tan Wei Chong* faced a larger about 50% more in the number of charges. For the charges under s 420 of the Penal Code, the charges proceeded with in *Tan Wei Chong's case* ranged from EUR88,122.28 to SGD250,000. The charges proceeded with in the present AP' s case ranged at larger amounts, from SGD220,000 to USD632,000. For a charge involving SGD250,000, the offender in *Tan Wei Chong* was sentenced to 3 years' imprisonment and was given a global sentence of 7 years' imprisonment.

(b) I noted the Defence submission that *Tan Wei Chong* is clearly distinguishable from and far more serious than our present case given the disparity in the total amount defrauded and the total amount of loss was more than the AP's case as there was virtually no recovery or restitution.

(ii) *PP v Nelson Daniel Prajudo (DAC55235 of 2009 & others)*

(a) The total amount involved was about SGD2 plus million with a total loss of about SGD756,949.37 as compared to the total amount of about SGD 2,487,748.99 involved in our present case with a loss of SGD1,948,311.98 suffered by Clariden as the victim. The number of charges was very large in that case, but the amounts involved per charge were also but a small fraction of the amount involved per charge in the present AP's case. The offender in *Nelson Daniel Prajudo* was sentenced to a total of 74 months' imprisonment.

(b) I noted the Defence submission that the total amount defrauded in *Nelson Daniel Prajudo* comes to nearly SGD 2.7 million and the total loss in *Nelson Daniel Prajudo* is at about nearly SGD 800,000. The motivation for all of the offences in *Nelson Daniel Prajudo* was also entirely personal – if the monies were not used splashing out on luxury goods, it was used to cover up for other fraudulent unit trust transactions or to pay for premiums for fraudulent insurance policies. This contrasts with the AP's case where he made a single luxury purchase of a watch for USD60,000 and 1/3 of the transferred monies was for the Beneficiaries. The scope of the crime in *Nelson Daniel Prajudo* is also significantly larger, with the offender facing 149 charges, five times as many charges as the AP faces. This is a significant factor that makes *Nelson Daniel Prajudo* a much more aggravated case.

(iii) *PP v Wahidi Sujono Iskandar (DAC 31114 of 2007 & others)*

(a) The total amount of financial loss caused by the offender was SGD348,841.62 as compared to the total amount of about SGD 2,487,748.99 involved in our present case with a loss of SGD1,948,311.98 suffered by Clariden as the victim. He was charged with 10 counts of offence under s 420 of the Penal Code, 1 count of attempted cheating under Section 420 r/w Section 511 of the Penal Code, and 3 counts of offence under Section 468 of the Penal Code. The Prosecution proceeded with 4 s 420 charges. The offender was sentenced to a total sentence of 4 years' imprisonment.

(b) I noted the Defence submission that the total amount defrauded and total amount of losses in *Wahidi Sujono Iskandar* and *Premala d/o Ramasamy (DAC 19662 of 2007 and others)* are not very disparate, at about SGD 348,841.61 and SGD 250,000. However, the sentences are quite disparate, with *Wahidi Sujono Iskandar* receiving 4 years imprisonment and *Premala d/o Ramasamy* receiving 8 months imprisonment although *Wahidi Sujono Iskandar* faced 14 charges and *Premala d/o Ramasamy* faced 58 charges. It is unclear without further information what, if any other factors were at play in these 2 cases and they are not reliable sentencing precedents.

(iv) *PP v Ragamatthulla s/o Meeran Gani (DAC 20893 of 2009 & others)* and *PP v Anita Binte Said (DAC 20995 of 2009 & others)*

(a) Offender Anita Binte was a clerk with the OCBC. Falsified invoices relating to a courier service provider engaged by OCBC were submitted to OCBC for payment. The total amount involved with no restitution made was S$1.7 million as compared to the total amount of about SGD 2,487,748.99 involved in our present case with a loss of SGD1,948,311.98 suffered by Clariden as the victim. The offenders were charged with 93 counts of offence under s 420 r/w s 109 of the Penal Code and 9 counts of offence under s 47(1)(b) of the CDSA r/w s 109 of the Penal Code. The Prosecution proceeded on 5 cheating charges and 3 CDSA charges. They were sentenced to 18 months' imprisonment per cheating charge (involving sums of SGD56,640, SGD54,280, SGD51,920, SGD52,800 and SGD53,100) and 12 months' imprisonment per CDSA charge (involving sums of SGD13,020, SGD9,999.99 and RM41,235). The total sentence imposed was 5 years 6 months' imprisonment.

(b) I noted the Defence submission that the offenders in *Ragamatthula s/o Meeran Gani* and *Anita Bin Said* worked in tandem and not individually, and were charged with abetting each other, which is an aggravating factor. There was also a total loss of S$1.7 million as no restitution was made. They faced 102 charges in total, more than three times as many charges as the AP. It is clear that their cases were far more aggravated that the AP. It is hard to see the Prosecution's justification for asking for 6 years' imprisonment in our present case when in this pair of more aggravated cases, the offenders were sentenced to 5 years and 6 months imprisonment in total.

(v) *PP v Raymond Joshua Gan Pak Kuen where (DAC 010203 of 2009 & others)*

(a) The total amount of financial loss caused by the offender was SGD262,933.01 with restitution of SGD206,166.33 as compared to the total amount of about SGD 2,487,748.99 involved in our present case with a loss of SGD1,948,311.98 suffered by Clariden as the victim. He was charged with 4 counts of offence under s 468 of the Penal Code, 5 counts of offence under s 420 of the Penal Code, 5 counts of offence under s5(1) read with Enhanced punishment for offences involving protected computers under s 9(1) of the Computer Misuse Act (Cap. 50A) ("CMA") and 6 counts of offence under s 47(1)(b) of the CDSA. The Prosecution proceeded with 2 s 468 charges, 2 s 420 charges, 2 CMA charges and 2 CDSA charges. The offender was sentenced to 12 months' imprisonment for each of the two s 468 charges, 12 months' imprisonment for one s 420 charge, 18 months' imprisonment for the other s 420 charge, 12 months' imprisonment per CMA charge, 12 months' imprisonment for one CDSA charge and 6 months' imprisonment for the other CDSA charge. 4 sentences were ordered to run consecutively, giving a total of 54 months' imprisonment.

(b) I noted the Defence submission that *Raymond Joshua Gan Pak Kuen* is not a useful sentencing precedent as he faced several charges under the CMA that entailed enhanced punishment as the offences involved protected computers. Such cases are invariably treated much more seriously than cases of 'paper' fraud (e.g. forged signatures, fake documents, etc.). There are also missing facts, such as the total amount defrauded and the offender's position in the financial institution.

(vi) *PP v Sandeep Mehta (DAC No. 047906 of 2007 & Others)*

(a) The amount of loss caused by the offender was SGD196,982.85 with a sum of SGD211,413.65 confiscated to the State as compared to the total amount of about SGD 2,487,748.99 involved in our present case with a loss of SGD1,948,311.98 suffered by Clariden as the victim. The offender was charged with 1 count of offence under s 420 of the Penal Code, 2 counts of offence under s 4(3) of the CMA, 2 counts of offence under s 465 of the Penal Code, 2 counts of offence under s 47(1)(a) of the CDSA, and 2 counts of offence under s 47(1)(b) of the CDSA. The Prosecution proceeded with 1 s 420 charge, 1 CMA charge, 1 s 465 charge, and 1 s 47(1)(a) CDSA charge. 2 sentences were ordered to run consecutively, giving a total sentence of 36 months' imprisonment.

(b) I noted the Defence submission that *Sandeep Mehta* also involves CMA charges and should equally be treated as a different class of case, like *Raymond Joshua Gan Pak Kuen*. There are also missing facts, such as the total amount defrauded and the offender's position in the financial institution.

(vii) *PP v Teo Yaw Tiong Ignatuis [2005] SGDC 196*

(a) The offender engaged in a conspiracy with another to submit forged instructions for the transfer of monies from the accounts of customers at OCBC bank to foreign bank accounts fraudulently opened and controlled by the offender in the name of the same customers. The accomplice was an Assistant Manager at OCBC Bank. On some occasions, the offender made the fraudulent withdrawals in Malaysia and used a friend's passport to hide his trail. A sum of SGD963,536 was siphoned away with no restitution made as compared to the total amount of about SGD 2,487,748.99 involved in our present case with a loss of SGD1,948,311.98 suffered by Clariden as the victim. He was charged with 4 counts of offence under s 471 r/w s 467 of the Penal Code, 4 counts of offence under s 465 of the Penal Code, 4 counts of offence under s 419 of the Penal Code and 6 counts of offence under s 468 of the Penal Code. The Prosecution proceeded on 6 charges. He was sentenced to 24 months' imprisonment for one s 471 r/w s 467 charge (involving USD342,523.07), 15 months' imprisonment for another s 471 r/w s 467 charge (involving SGD215,518), 15 months' imprisonment for two other s 471 r/w s 467 charges (involving SGD178,018 each), 12 months' imprisonment for the s 468 charge, and 6 month's imprisonment for one s 419 charge. A total of 4 terms were ordered to run consecutively, giving a total of 5 years' imprisonment. The accomplice pleaded guilty to 5 charges at an early stage with 9 charges taken into consideration. She made restitution of her share of the crime proceeds and assisted the bank's other recovery efforts. She was sentenced to 36 months' imprisonment in total.

(b) I noted the Defence submission that *Teo Yaw Tiong Ignatuis* is far more aggravated as it involved a conspiracy between two offenders and the offender in question claimed trial before pleading guilty. There was a degree of sophistication in that the offenders in that they opened fake bank overseas bank accounts in the name of customers in OCBC that they had stolen the details of. In fact, the offenders had hatched an earlier plan to siphon monies from banks that was not successful The offenders were clearly recalcitrant criminals. Yet, in *Teo Yaw Tiong Ignatuis*, the offender was only sentenced to 5 years imprisonment in total. Further, there was a sentence of 6 months' imprisonment for a very distinct offence of misusing a friend's passport to impersonate the friend (the s 419 charge) that ran consecutive to the other sentences. This meant that the aggregate sentence for the 'financial crimes' despite all the aggravating factors was only 4 years and 6 months imprisonment.

(viii) *PP v Andreas Prawito (DAC No. 42511 of 2004 & Others)*

(a) The offender was the Vice President UOB Branch Manager. Offences were committed between May 2003 and April 2004. The total amount involved was SGD7.4 million with restitution made and the amount unaccounted for/ not recovered was $307,538 as compared to the total amount of about SGD 2,487,748.99 involved in our present case with a loss of SGD1,948,311.98 suffered by Clariden as the victim. The offender was charged with 8 counts of offence under s 468 of the Penal Code, 2 counts of offence under s 420 of the Penal Code, 4 counts of offence under s 47(1)(b) of the CDSA. The Prosecution proceeded on 6 charges. The offender was sentenced to 4 years' imprisonment for one s 468 charge, 3 years' imprisonment for another s 468 charge, 2 ½ years' imprisonment for another s 468 charge, 1 year's imprisonment for another s 468 charge, 1 year's imprisonment for one s 420 charge, and 6 months' imprisonment for the CDSA charge. The total sentence imposed was 5 years' imprisonment.

(b) I noted the Defence submission that *Andreas Prawito* is far more aggravated as the offender was a high-ranking Vice President of UOB. Further, the amount defrauded was astronomical – about SGD 7.4 million. Yet the eventual sentence was only 5 years' imprisonment.

34 For the purpose of sentence, the AP had admitted to 8 other forgery charges and 13 other CDSA charges which are similar in nature and consented to these TIC charges been taken into account. The effect of taking into consideration outstanding offences is to enhance the sentence that would otherwise have been imposed in respect of the proceeded charges[note: 54]. The TIC charges taken into consideration in this case bear great similarity to the offences that had been proceeded with. When considered in light of the offences that had been proceeded with, they paint a vivid picture of the extent that the AP had gone to in order to commit the offences activities. Hence, these charges should be factored in the Court's assessment of the appropriate sentence to be imposed on the AP.

35 As no two cases can ever be identical or even similar on all aspects, I have summarized above and noted the submissions of both parties on how the various sentencing precedents for each proceeded charge and the global sentence which have been cited and relied upon by the other party are distinguishable from our present case. I have considered and taken all these distinguishing features into account in arriving at an appropriate sentence to be imposed on the AP, bearing in mind that the sentences "do not bear a relationship of linear proportionality with the sums involved" [note: 55] as well as the total amount involved of about SGD 2,487,748.99 with a loss of SGD1,948,311.98 suffered by Clariden as the victim, and the aggravating and the mitigating factors highlighted by both parties (which I had accepted in [12] and [15] above). Using the above sentencing precedents[note: 56] of a global sentence of between 8 months and 7 years for a total loss amount of between SGD250,000 and SGD4.9 million as a guide, I rejected the prosecution submission for a global sentence of not less than 6 years and took the view that a global sentence of between 5 and 6 years would be appropriate in our present case. To properly reflect the overall criminality of the AP's conduct in the 30 charges faced by him (of which the prosecution proceeded with 8 charges) and ensure that he is adequately punished by serving two sentences for the 5 proceeded s 468 offences (with another 8 s 468 offences been taken into consideration) and one sentence for the 3 proceeded CDSA offences (with another 13 CDSA offences been taken into consideration), **I ordered the sentences in DAC 20671/2013, DAC 20672/2013 and DAC 20695/2013 to run consecutively** with the remaining sentences of imprisonment to run concurrently, **giving a global sentence of 66 months' imprisonment backdated to the AP's remand date of 7 June 2013**.

36 For all the above reasons, the above global sentence of 66 months' imprisonment which I had imposed on the AP was not manifestly excessive or inadequate, but entirely appropriate based on the above sentencing considerations and precedents and taking into account the aggravating and mitigating factors in our present case. The aforesaid global sentence which I had imposed on the AP was certainly commensurate with his overall criminality and was a sufficient deterrent sentence tempered with proportionality without the effect of a crushing sentence.

[note: 1]*Tan Kay Beng v PP [2006] 4 SLR(R) 10; [2006] SGHC 117 at [36] to [38].*

[note: 2]See *PP v Fernando Payagala Waduge Malitha Kumar [2007]2 SLR(R) 334 at [49].*

[note: 3]See *PP v Law Aik Meng [2007] 2 SLR(R) 814 at [21] to [24].*

[note: 4]See *Sentencing Practice in the Subordinate Courts (Third Edition, 2013) at p. 1000.*

[note: 5]See *Sentencing Practice in the Subordinate Courts (Third Edition, 2013 at p. 1000-1001.*

[note: 6]See *Sentencing Practice in the Subordinate Courts (Third Edition, 2013 at p.1316-1317.*

[note: 7]See *Lim Ek Kian v PP [2003] SGHC 58*, cited in *Sentencing Practice in the Subordinate Courts (Third Edition, 2013) at p. 1000*. See also *PP v Alvin Lim Yuh Haw (DAC No. 020731 of 2010 & Others).*

[note: 8]See *PP v Nelson Daniel Prajudo (DAC No. 55235 of 2009 & Others).*

[note: 9]See *PP v Tan Wei Chong (DAC No. 018217 of 2011 & Others).*

[note: 10]See *PP v Ragamatthulla s/o Meeran Gani (DAC No. 20893 of 2009 & Others) and PP v Anita Binte Said (DAC No. 20995 of 2009 & Others) and PP v Chew Swee Siong [2010] SGDC 312.*

[note: 11]See *PP v Premala d/o Ramasamy (DAC No. 19662 of 2007 & Others).*

[note: 12]See *PP v Raymond Joshua Gan Pak Kuen (DAC No. 010203 of 2009 & Others).*

[note: 13]See *PP v Wahidi Sujono Iskandar (DAC No. 31114 of 2007 & Others).*

[note: 14]See *PP v Alvin Lim Yuh Haw (DAC No. 020731 of 2010 & Others)*.

[note: 15]See *PP v Nelson Daniel Prajudo (DAC No. 55235 of 2009 & Others).*

[note: 16]See *PP v Yap Lip Leong (MA352/93/01).*

[note: 17]See *PP v Teo Yaw Tiong Ignatuis [2005] SGDC 196*.

[note: 18]See *PP v Ragamatthulla s/o Meeran Gani (DAC No. 20893 of 2009 & Others) and PP v Anita Binte Said (DAC No. 20995 of 2009 & Others).*

[note: 19]See *PP v Ng Ting Hwa [2008] SGDC 147*.

[note: 20]See *PP v Anthony Lim Book Liak (DAC 008858 of 2012 and others).*

[note: 21]See *PP v Tan Wei Chong (DAC No. 018217 of 2011 & Others)*.

[note: 22]See *PP v Chong Seah Wee (DAC 3539/2002 & Others).*

[note: 23]See *PP v Andreas Prawito (DAC No. 42511 of 2004 & Others).*

[note: 24]See [4] to [6] above.

[note: 25]The length of time a particular scam or offence has gone undetected would be a relevant consideration in sentencing as this may also be tied to the recalcitrance of the offender. In the case of a hardened offender, he would have repeatedly committed a pattern of offences without any sign or acknowledgment of contrition or remorse. The longer the period of time over which the offences have been committed, the more irrefutable it is that the offender manifests the qualities of a habitual offender. Specific deterrence is incontrovertibly an important sentencing consideration in such cases: see *PP v Fernando Payagala Waduge Malitha Kumar [2007] 2 SLR(R) 334 at [43].*

[note: 26]See *Wong Kai Chuen Philip v PP [1990] 2 SLR(R) 361*.

[note: 27]*PP v Syamsul Hilal bin Ismail* [2012] 1 SLR 973 at [26][-27]

[note: 28]*Tan Thiam Wee v PP* [2012] 4 SLR 141 at [8]

[note: 29]eg, *PP v Lee Chee Heng* (DAC 33578-11 and others, unreported); *PP v Poong Kim Fee* (MA 48/2011, unreported); and *PP v Xu Fang* (MA 49/2011, unreported).

[note: 30]*Luong Thi Trang Hoang Kathleen v PP* [2010] 1 SLR 707

[note: 31]*PP v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 at [74]

[note: 32]See *Dinesh Singh Bhatia s/o Amarjeet Singh v PP* [2005] 3 SLR(R) 1 at [24]: "**No two cases can or will ever be completely identical or symmetrical**. The lower courts, while obliged to pay careful and thoughtful attention to tariffs and/or sentencing precedents, must not place them on an altar and obsessively worship them. The judicial prerogative to depart in a reasoned and measured manner from sentencing and precedent guidelines in appropriate cases should not be lightly shrugged off. Sentencing is neither a science nor an administrative exercise. **Sentences cannot be determined with mathematical certainty.** Nor should they be arbitrary. **The sentence must fit the crime**. Every sentence reflects a complex amalgam of numerous and various factors and imponderables and requires the very careful evaluation of matters such as public interest, the nature and circumstances of the offence and the identity of the offender. Most crucially, it calls for the embodiment of individualised justice. This in turn warrants the application of sound discretion. General benchmarks, while highly significant, should not by their very definition be viewed as binding or fossilised judicial rules, inducing a mechanical application." (emphasis mine)

[note: 33]*PP v Tan Cheng Yew* [2013] 1 SLR 1095 at [184]

[note: 34]See *PP v Tan Wei Chong (DAC No. 018217 of 2011 & Others)*.

[note: 35]See *PP v Chong Seah Wee (DAC 3539/2002 & Others).*

[note: 36]See [4] above.

[note: 37]See [4] above.

[note: 38]See *PP v Lim Hoon Choo [1999] 3 SLR(R) 803*.

[note: 39]See *Cheong Siat Fong v Public Prosecutor [2005] SGHC 176 at [23].*

[note: 40]About SGD2,500,000 based on USD1 = SGD1.25.

[note: 41]See [5] above. See also *PP v Gurmit Singh s/o Jaswant Singh [1999] 1 SLR(R) 1083* where the offender was a police corporal who pleaded guilty to three charges under Section 465 r/w Section 471 of the Penal Code. He had wrongfully kept police exhibits after forging the signatures of their rightful owners. **The High Court noted that there was no loss suffered by the victims and the offender had not profited from his misdeeds, and held that this was a legitimate mitigating factor but carried little weight. The High Court's reasoning was that the offender was a police officer and had committed these offences in the course of his duty; it was in the public interest that a committal sentence be given.** The whole purpose of the law is to maintain order and discipline and it was left to police officers to enforce the law and hence a deterrent sentence ought to be given to the offender in view of this aggravating factor.(emphasis mine)

[note: 42]See *Teo Kian Leong v PP [2002] 1 SLR 147 at [44*] which is a case involving unauthorised share trading without the account holder's consent where it was held that the loss caused by the offender (ie the magnitude of a crime) is only one of the factors to be considered by the court when it makes an assessment of the appropriate sentence to be meted out. Other factors that should be considered are the gravity of the offence, the circumstances under which the acts were committed and any legitimate mitigating factors which may exist (such as whether the acts were committed after deliberation and premeditation and whether there was an abuse of trust) have to be considered and taken into account.

[note: 43]See PP v Wang Ziyi Able [2008] 2 SLR 1082 at [29] where it was held that: "**Judicial attitudes towards the punishment of white-collar crime must strive to remain current and relevant and must reflect the wider public interest**. It should be acknowledged that fines for the well heeled often fail to amount to either sufficient or meaningful deterrence. **White-collar crimes, especially financial market-related crimes, often have wider ramifications and repercussions on many more persons and financial institutions as well as a far more significant impact on market confidence** than offences against the person which by and large entail more limited consequences. **Sentencing judges should painstakingly seek to ensure that the punishment adequately addresses the harm caused by the offence** in these circumstances. ..."(emphasis mine)

[note: 44]See *Poh Chu Chai, Banking Law (LexisNexis, 2011, 2nd Ed.), at page 39*.

[note: 45]In *A S Nordlandsbanken and another v Nederkoorn Robin Hoddle [2000] 3 SLR(R) 918 at [47]*, the High Court considered '**the rule of least benefit to the plaintiff'** and stated that "It is **also called the rule of minimum legal obligation. The basis of the rule is fairness to the contract breaker and to ameliorate harshness.** In general, **civil law, unlike criminal law**, **does not set out to punish the wrong-doer**. It seeks to compensate the wrong on a just and fair basis. The plaintiff is not entitled to a windfall. It is based on the public policy principle that litigation must not be turned into a lottery. … " (emphasis added)

[note: 46]See *Kow Keng Siong, Sentencing Principles in Singapore, 209 Edition at pp.420-422*.

[note: 47]See *PP v Leong Wai Nam [2010] 2 SLR 284.*

[note: 48]See *PP v UI [208] SGCA 35 at [48] to [58].*

[note: 49]See ss 228(2)(b) and 228(7) of the CPC which allows the Prosecution's address on sentence to include any victim impact statement which is defined to mean any statement relating to any harm suffered by any person as a direct result of an offence, including physical bodily harm or psychological or psychiatric harm.

[note: 50]See : (i) *Lai Jenn Wuu v PP [2013] SGHC 190* where the offender had forged the owner's signature on an unsigned cheque (for S$50,000), which he had found. The offender argued he is a talented man with a bright future and he would not be allowed to practise medicine if a custodial sentence is imposed. The High Court held that "... even if this were a valid mitigating factor, which I am not entirely sure it is, **it was outweighed by the seriousness of the offence**". (emphasis added) (ii) *PP v Lee Meow Sim Jenny [1993] SGCA*, where it was submitted in mitigation that by the conviction, the offender had brought irreparable damage to her own character and the prospects of her future employment, the Court of Appeal found little merit in the mitigating factor raised and held that **personal ruin is what one must expect when one embarks on a life of crime.** (emphasis added)

[note: 51]See: (i) *Lim Choon Kang v PP [1993] 3 SLR(R) 254 at [5]* where the High Court held that the mitigating factor of hardship which an offender's family will suffer if the offender is sent to prison is "of very little weight in Singapore nowadays, and of no weight at all when the term of imprisonment is short". (i) *Lai Oei Mui Jenny v PP [1993] 2 SLR(R) 406 at [12]*, the fact that imprisonment of an offender would cause hardship to the family was held by the High Court not to be an argument which should normally be taken into account for the purposes of sentencing. In that case, the appellant was a divorcee with two young children. The Court also recognised that most of the time, imprisoning the main or sole breadwinner of a family

unavoidably causes hardship to his/ her family. The High Court added that "the circumstances which might persuade a court, in mercy, to reduce what would otherwise be the proper sentence ... ought to be quite exceptional before a reduction of the proper sentence would be justified". (ii) PP v Perumal s/o Suppiah [2000] 2 SLR(R) 145 where it was held that little weight should have been placed on the fact that the offender had two young children aged six and ten respectively.(iii) *PP v Tan Fook Sum [1999] 1 SLR(R) 1022 at [31]*, where hardship was again held by the High Court to be not a relevant factor. The offender in that case had pleaded for leniency as he has two parents, a wife who is not working and two children to support. The High Court was of the view that the offender's circumstances "fell far short of those required to qualify hardship as a mitigation factor ..."

[note: 52]See {9] and [10] above.

[note: 53]See *PP v Lim Hoon Choo [1999] 3 SLR(R) 803*.

[note: 54]See *PP v UI [2008] 4 SLR(R) 500 at [38].*

[note: 55]*PP v Tan Cheng Yew* [2013] 1 SLR 1095 at [184]

[note: 56]See [11] above.

BACK TO TOP