Public Prosecutor *v* Ng Kheng Wah and others
[2019] SGDC 249

Case Number : DAC 923197-2018 & Ors

Decision Date : 22 November 2019

Tribunal/Court : District Court

Coram : Bala Reddy

Counsel Name(s) : Alan Loh/ Thiam Jia Min (Deputy Public Prosecutors) for the Prosecution; Edmond Pereira/Amardeep Singh (Edmond Pereira Law Corporation) for Ng Kheng Wah and T Specialist International (S) Pte Ltd; Derek Kang/Lim Shi Zheng (Lin Shizheng) (Cairnhill Law LLC) for Wang Zhi Guo

Parties : Public Prosecutor — Ng Kheng Wah — T Specialist International (S) Pte Ltd — Wang Zhiguo

Criminal Procedure and Sentencing – Sentencing

United Nations (Sanctions – DPRK) Regulations 2010 – Breach of United Nations Sanctions

22 November 2019

Senior District Judge Bala Reddy:

Introduction

1 The United Nation Security Council's ("UNSC") sanctions regime is one of the measures that the United Nations ("UN") has put in place to combat the Democratic People's Republic of Korea ("DPRK") nuclear weapons programme. This sanctions regime will only be effective if every UN member state, including Singapore, uses its best efforts to ensure full compliance. Trading in prohibited items with the DPRK – designated luxury items exceeding $6 million – undermines this sanctions regime. Such illicit international trade also negatively impacts the breaching country's international reputation and raises questions of its commitment to the UNSC's sanctions regime.

2 Between 2010 and 2017, Ng Kheng Wah ("Ng"), through T Specialist International (S) Pte Ltd ("T Specialist"), supplied prohibited luxury items exceeding $6 million to the Korean Bugsae Shop, a departmental store chain in the DPRK, in breach of Regulation 5(a) of the UN (Sanctions-DPRK) Regulations 2010 ("*UN-DPRK Reg*").[note: 1]

3 When Li Ik, a DPRK national and owner of the Korean Bugsae Shop, with whom Ng was transacting, was failing to make payments for the shipments he received, Ng devised an invoice-financing fraud in order to generate liquidity for T Specialist. Ng used 81 fictitious invoices purportedly issued by Pinnacle Offshore Trading Inc ("Pinnacle Offshore") to T Specialist, to deceive five banks into granting more than US$95 million in trade financing loans to T Specialist for non-existent supply of goods (mainly Watari-brand instant noodles) between T Specialist and Pinnacle Offshore. Pinnacle Offshore was a British Virgin Island ("BVI") company owned by Wang Zhiguo ("Wang"). The banks, believing the invoices to be genuine, made payment of the invoice amounts to Pinnacle Offshore. Pinnacle Offshore then transferred these funds back to the bank accounts of T Specialist and its affiliated companies.[note: 2]

4 Ng was convicted of:

(a) 10 charges of abetment by engaging in a conspiracy to supply designated luxury items to the Korean Bugsae Shop in the DPRK in breach of Regulation 5(a) of the *UN-DPRK Reg*; and

(b) 10 charges of abetment by engaging in a conspiracy to cheat the banks under Section 420 read with Section 109 of the Penal Code, (Cap 224, 2008 Rev Ed) ("cheating charges").

5 69 other similar charges in breach of Regulation 5(a) of the *UN-DPRK Reg* and 71 other similar cheating charges were taken into consideration for sentencing. Ng was sentenced to a total imprisonment term of **34 months**.

6 T-Specialist was convicted of:

(a) 10 charges of abetment by engaging in a conspiracy to supply designated luxury items to the Korean Bugsae Shop in the DPRK in breach of Regulation 5(a) of the *UN-DPRK Reg*; and

(b) 2 charges under Section 47(1)(c) punishable under Section 47(6) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, (Cap. 65A, 2000 Rev. Ed.) ("CDSA").

7 69 other similar charges in breach of Regulation 5(a) of the *UN-DPRK Reg* and 6 other similar CDSA charges were taken into consideration for sentencing. T Specialist was sentenced to a total fine of **$880,000**.

8 Wang was convicted of 10 charges of abetment by engaging in a conspiracy to cheat the banks under Section 420 read with Section 109 of the Penal Code, (Cap 224, 2008 Rev Ed). 71 other similar charges were taken into consideration for sentencing. Wang was sentenced to a total imprisonment term of **12 months**.

Background

The United Nations Sanctions Regime

9 In response to the DPRK's nuclear weapons programme and its first nuclear test in 2006, the UNSC passed Resolution 1718 (2006) ("Resolution 1718") on 14 October 2006, which imposed a series of economic sanctions and commercial sanctions against the DPRK, including sanctions against the supply of designated luxury items to the DPRK. There are no exemptions available for this measure.[note: 3] The UNSC's 1718 Sanctions Committee (DPRK) has oversight over the relevant sanctions measures relating to the DPRK and is supported by the Panel of Experts ("Panel") established pursuant to Resolution 1874 (2009).[note: 4] One of the functions of the Panel include gathering, examining and analysing information from States, relevant United Nations bodies and other parties regarding the implementation of measures and, on incidents of non-compliance with UN sanctions against the DPRK. Each year, the Panel provides two reports to the UNSC – a mid-term report and a final report – detailing its findings on incidents of non-compliance. These reports are publicly accessible on the UNSC's website.[note: 5]

UN Sanctions and legislative framework in Singapore

10 The United Nations Act ("UN Act") was passed in October 2001 to enable Singapore to pass such regulations as necessary to give effect to the decisions of the UNSC effectively and promptly. The Minister for Law and the Minister for Foreign Affairs ("Minister"), Prof. S Jayakumar, explained that the UN Act was necessary because:

> "…time becomes of the essence. You have to implement speedily and report speedily to the Security Council. In most cases now, after the resolution is adopted, a committee is set up, which is loosely referred to as the Sanctions Committee. The members would be asked to report very soon what they have done and what kind of follow-up actions they have taken. So really there is no luxury of time anymore."[note: 6]

11 The legislative intent of the *UN-DPRK Reg* was to give effect to the UNSC's resolutions against the DPRK, including Resolution 1718.[note: 7] Regulation 5(a) of the *UN-DPRK Reg* prohibits any person in Singapore or a citizen outside Singapore to supply, sell or transfer, directly or indirectly, any designated luxury items to any person in the DPRK. Designated luxury items

include "cosmetics and perfumes" and "wines and spirits".[note: 8] The *UN-DPRK Reg* came into operation on 1 November 2010. [note: 9]

The Facts

The Accused

12 Ng, a Singapore citizen, was a director of T Specialist. T Specialist was incorporated in Singapore on 27 August 1997 and was engaged in the business of general wholesale trade. Wang is a Chinese National and a Singapore Permanent Resident. At the material time, Wang was the key decision maker of two BVI incorporated companies, Pinnacle Offshore and Mars-Rock Offshore Trading ("Mars-Rock"). Ng and Wang are long-time friends and close business associates.

The Accomplices

13 Li Ik is a DPRK national and owner of a departmental store chain in the DRPK known as the Korean Bugsae Shop. At the material time, T Specialist was one of the said shop's primary suppliers of designated luxury items. Between 2014 to 2017, Li Hyon assisted Li Ik with his luxury items business in Singapore. Sherly Muliawan ("Sherly") is an Indonesian National and Singapore permanent resident. At the material time, she was the Shipping Manager and purchaser of T Specialist.

Breach of UN-DPRK Regulations

14 Ng's parents managed a company known as OCN Singapore Pte Ltd ("OCN Singapore"), which was incorporated in Singapore in 1993. Between 1990 and 2002, OCN Singapore engaged in commercial trade with the DPRK. At the material time, there was no international or local restrictions against commercial trade with the DPRK. During this period, Ng became acquainted with Li Ik and Wang.[note: 10]

15 Sometime in 2002, Ng, through T Specialist, took over OCN Singapore's business with the DPRK. Sometime in 2003, Li Ik opened the Korean Bugsae Shop in Pyongyang. At the material time, T Specialist was one of the suppliers of the Korean Bugsae Shop. Between 2002 and 2006, Li Ik was prompt in his payment for goods supplied by T Specialist to the Korean Bugsae Shop. However, when international sanctions through Resolution 1718 were imposed on the DPRK, Li Ik's ability to pay T Specialist for goods supplied was severely affected.[note: 11] By the end of 2013, Li Ik owed T Specialist about US$20 million of delayed payment for goods.[note: 12]

16 Nevertheless, even after the *UN-DPRK Reg* came into force, for a protracted period of 7 years between November 2010 and January 2017, T Specialist, under Ng's instructions, directly supplied designated luxury items, to the Korean Bugsae Shop. T Specialist supplied designated luxury items to the DPRK via transhipment through Dalian, China. Once the shipment was received, Li Ik and subsequently Li Hyon, would arrange for payment to be made to T Specialist through front companies in China and Hong Kong. The designated luxury items supplied include[note: 13]:

(a) wines and spirits;

(b) perfumes, cosmetics, musical instruments and precious jewellery; and

(c) watches clad with a precious metal.

17 At the material time, Ng was aware that such actions were in breach of the *UN-DPRK Reg*. Ng deliberately concealed the fact that the designated luxury items were to be shipped to the DPRK by failing to declare the final port of delivery to Singapore Customs.

Invoice Financing Fraud (Cheating offences)

18 Due to Li Ik's frequent delayed payments, T Specialist experienced shortfall in its cash flow. In order to generate liquidity for T Specialist, between January 2014 to August 2016, Ng conspired with Wang to devise a fraudulent invoice-financing scheme to obtain loans from five different banks in Singapore for T Specialist business expenses and to repay outstanding bank facilities. The five banks are:

(a) DBS Bank Ltd ("DBS");

(b) CIMB Bank Berhad ("CIMB");

(c) Malayan Banking Berhad ("Maybank");

(d) RHB Bank Berhad ("RHB"); and

(e) Overseas-Chinese Banking Corporation Ltd ("OCBC").

19 On Ng's instructions, T Specialist submitted fictitious commercial invoices on 81 occasions to the five banks:

(a) Wang provided blank softcopy templates of Pinnacle Offshore's commercial invoices bearing his own digital signature to Ng and Sherly;

(b) Sherly, on Ng's instructions, filled in the templates and submitted the completed invoices to the five banks in support of invoice financing loan applications. Pinnacle Offshore purportedly sold Watari–brand instant noodles to T Specialist;

(c) In order to deceive the banks into believing that the transactions were genuine, Ng:

(i) showed or verbally informed the banks of a contract between T Specialist and Pinnacle Offshore explaining that there was an arrangement where Pinnacle Offshore would help to collect moneys from T Specialist debtors and also to source for Watari instant noodles; and

(ii) instructed T Specialist to ship a few hundred cartons of instant noodles abroad in 2014, thereby giving the impression that Ng was indeed transacting in instant noodles as part of his business.

20 The five banks, believing the commercial invoices to be genuine, made payment of the invoice amounts to Pinnacle Offshore. At the material time, both Ng and Wang were aware that there were in fact no underlying goods transactions between Pinnacle Offshore and T Specialist. The invoices were accordingly false.

Money laundering activities (CDSA offences)

21 To avoid detection from the banks, Ng suggested to Wang to make use of Mars-Rock to further layer the round tripping of moneys from Pinnacle Offshore's bank accounts to T Specialist's bank accounts. In some of the 81 cases, Wang first transferred moneys received from Pinnacle Offshore's bank account to Mars-Rock's bank account in China. Thereafter, the moneys were transferred to T Specialist's bank accounts, or the accounts of Ng's other companies. On other occasions, upon receipt of the moneys from the banks, Wang instructed his staff to transfer the moneys to T Specialist's bank accounts or the bank accounts of Ng's other companies.

22 Ng also instructed Sherly to create various trade documents (i.e. commercial invoices and delivery orders) from T Specialist and his other companies to Pinnacle Offshore and Mars-Rock, to give the impression that these were genuine transactions leading to repayments from Pinnacle Offshore and Mars-Rock to T Specialist or Ng's other companies.

The Charges

Summary of Charges against Ng

Accused	**Total Number of Charges**	**Proceeded charges**	**TIC charges**
Ng Kheng Wah[note: 14]	· 80 counts of abetment by conspiracy to breach Reg 5(a) of the UN-DPRK Reg r/w Section 109 PC	· 10 counts of abetment by conspiracy to breach Reg 5(a) of the UN-DPRK Reg r/w Section 109 PC	· 69 counts of abetment by conspiracy to breach Reg 5(a) of the UN-DPRK Reg r/w Section 109 PC
	· 81 counts of abetment by conspiracy to Cheat under Section 420 r/w Section 109 PC	· 10 counts of abetment by conspiracy to Cheat under Section 420 r/w Section 109 PC	· 71 counts of abetment by conspiracy to Cheat under Section 420 r/w Section 109 PC

23 The Prosecution proceeded with 10 *UN-DPRK Reg* charges of the highest dollar value against Ng between 12 December 2011 and 3 March 2015. The *UN-DPRK Reg* charge (DAC 923213-2018) against Ng was in the following terms:

> "You, [Ng Kheng Wah], on or around 12 December 2011, in Singapore, did abet by engaging in a conspiracy with T Specialist International (S) Pte Ltd ("T Specialist"), Sherly Muliawan, and Li Ik, to supply designated luxury items to a person in the Democratic People's Republic of Korea ("DPRK"), and in pursuance of that conspiracy, and in order to the doing of that thing, an act took place on 12 December 2011, in Singapore, *to wit*, T Specialist supplied wines and spirits, amounting to a sum of SGD 295,819.30 to the Bugsae Shop in the DPRK, which act was committed in consequence of your abetment, and you have thereby committed an offence under Regulation 5(a) read with Regulation 16(1) of the United Nations (Sanctions – Democratic People's Republic of Korea) Regulations 2010, which offence is punishable under Section 5(1) of the United Nations Act, (Cap 339, 2002 Rev Ed), read with Section 109 of the Penal Code, (Cap. 224, 2008 Rev. Ed.)"

24 The other *UN-DPRK Reg* charges against him were similar to the above.

25 The Prosecution also proceeded with 10 cheating charges of the highest dollar value against Ng between 14 March 2014 to 20 May 2015. The cheating charge (DAC 923282-2018) against Ng was in the following terms:

> "You, [Ng Kheng Wah], on or around 14 March 2014, in Singapore, did abet by engaging in a conspiracy with one Wang Zhi Guo and T Specialist International (S) Pte Ltd ("T Specialist") to cheat DBS Bank Ltd, and in pursuance of that conspiracy and in order to the doing of that thing, an act took place on 14 March 2014, in Singapore, *to wit*, T Specialist on your instructions submitted to DBS Bank Ltd a document in support of its application for a trade financing loan, *to wit*, an invoice purportedly issued by Pinnacle Offshore Trading Inc ("Pinnacle") to T Specialist for the sale of Watari MSG 99% Purity for the amount of USD 2,160,000, with invoice number 20140313-1, knowing the said invoice to be false, and by such manner of deception, dishonestly induced DBS Bank Ltd to make payment of USD 2,160,000 to Pinnacle, which act was committed in consequence of your abetment, and you have thereby committed an offence punishable under Section 420 read with Section 109 of the Penal Code (Cap. 224, 2008 Rev. Ed.)"

26 The other cheating charges against him were similar to the above.

Summary of Charges against T Specialist

Accused	Total Number of Charges	Proceeded charges	TIC charges
T Specialist[note: 15]	· 80 counts of breach of Reg 5(a) of the UN-DPRK Reg r/w Section 109 PC	· 10 counts of breach of Reg 5(a) of the UN-DPRK Reg r/w Section 109 PC	· 69 counts of breach of Reg 5(a) of the UN-DPRK Reg r/w Section 109 PC
	· 8 counts under Section 47(1)(c) p/u Section 47(6) CDSA	· 2 counts under Section 47(1)(c) p/u Section 47(6) CDSA	· 6 counts under Section 47(1)(c) p/u Section 47(6) CDSA

27 The Prosecution proceeded with 10 *UN-DPRK Reg* charges of the highest dollar value against T Specialist between 12 December 2011 and 3 March 2015. The *UN-DPRK Reg* charge against T Specialist (DSC 900318-2018) was in the following terms:

> "You, [T Specialist], on or around 12 December 2011, in Singapore, did supply designated luxury items to a person in the Democratic People's Republic of Korea ("DPRK"), *to wit*, you supplied wines and spirits, amounting to a sum of SGD 295,819.30, to the Bugsae Shop in the DPRK, and you have thereby committed an offence under Regulation 5(a) read with Regulation 16(1) of the United Nations (Sanctions – Democratic People's Republic of Korea) Regulations 2010, which offence is punishable under Section 5(1) of the United Nations Act (Cap. 339, 2002 Rev. Ed.)"

28 The other *UN-DPRK Reg* charges against T Specialist were similar to the above.

29 The Prosecution proceeded with 2 CDSA charges of the highest dollar value against T Specialist between 19 May 2016 and 8 June 2016. The CDSA charge (DSC 900382-2018) was in the following terms:

> "You, [T Specialist], on 19 May 2016, in Singapore, did acquire property into your Overseas-Chinese Banking Corporation Limited bank account number XXX *to wit*, a sum of USD 765,000 which in whole directly represents your benefits of criminal conduct, *to wit*, cheating RHB Bank Berhad and dishonestly inducing a delivery of property, *to wit*, a sum of USD 780,000, under Section 420 of the Penal Code (Cap. 224, 2008 Rev. Ed.), and you have thereby committed an offence under section 47(1)(c) and punishable under section 47(6) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A, 2000 Rev. Ed.)"

30 The other CDSA charges against T Specialist were similar to the above.

Summary of Charges against Wang

Accused	Total Number of Charges	Proceeded charges	TIC charges
Wang Zhiguo	· 81 counts of abetment by conspiracy to Cheat under Section 420 r/w Section 109 PC	· 10 counts of abetment by conspiracy to Cheat under Section 420 r/w Section 109 PC	· 71 counts of abetment by conspiracy to Cheat under Section 420 r/w Section 109 PC

31 The Prosecution proceeded with 10 cheating charges of the highest dollar value against Wang between 14 March 2014 and 20 May 2015. The cheating charge (DAC 908801-2019) against Wang was in the following terms:

> "You, [Wang Zhiguo], on or around 14 March 2014, in Singapore, did abet by engaging in a conspiracy with one Ng Kheng Wah and T Specialist International (S) Pte Ltd ("T Specialist") to cheat DBS Bank Ltd, and in pursuance of that conspiracy and in order to the doing of that thing, an act took place on 14 March 2014, in Singapore, *to wit*, T Specialist on the instructions of Ng Kheng Wah submitted to DBS Bank Ltd a document in support of its application for a trade financing loan, *to wit*, an invoice purportedly issued by Pinnacle Offshore Trading Inc ("Pinnacle") to T Specialist for the sale of Watari MSG 99% Purity for the amount of USD 2,160,000, with invoice number 20140313-1, knowing the said

invoice to be false, and by such manner of deception, dishonestly induced DBS Bank Ltd to make payment of USD 2,160,000 to Pinnacle, which act was committed in consequence of your abetment, and you have thereby committed an offence punishable under Section 420 read with Section 109 of the Penal Code (Cap. 224, 2008 Rev. Ed.)"

32 The other cheating charges against Wang were similar to the above.

33 The total value of the designated luxury items supplied to the DPRK across the proceeded *UN-DPRK Reg* charges against both Ng and T Specialist is $2,573,858.81. The total value of the designated luxury items supplied to the DPRK across all the *UN-DPRK Reg* charges against Ng and T Specialist amounted to US$49,781.30 and $6,018,546.89.

34 The total value of trade financing loans disbursed by the five banks to Pinnacle Offshore across the proceeded cheating charges against Ng and Wang is US$23,058,270. The total value of trade financing loans disbursed by the five banks to Pinnacle Offshore across all the cheating charges against Ng and Wang is US$94,218,908 and $1,711,800. Ultimately, the banks suffered no loss as Ng had repaid the banks in full for the fictitious invoice financing loans.

35 The total value of moneys acquired by T Specialist representing its benefits from criminal conduct arising from cheating the banks across the two proceeded CDSA charges is $1,530, 000. The total value of monies acquired across all the CDSA charges is $5,329,500.

The Prosecution's Submissions

36 The Prosecution sought the following sentences for each accused :

Accused person	**Offence**	**Sentence**	**Global Sentence**
Ng Kheng Wah	· UN-DPRK charges (pre-amendment) · UN-DPRK charges (post-amendment) · Cheating charges	· 1 to 2 months' imprisonment per charge · 2 to 3 months' imprisonment per charges (2 charges to run consecutively) · 1 year's imprisonment per charge (3 charges to run consecutively)	· 3 years' and 4 months' imprisonment
T Specialist	· UN-DPRK charges (pre-amendment) · UN-DPRK charges (post-amendment) · CDSA charges	· Fine $30,000 per charge x 9 charges · Fine of $200,000 per charge x 1 charge · Fine $300,000 per charge x 2 charges	· Fine $1,070,000
Wang Zhiguo	· Cheating charges	· 6 months' imprisonment per charge (3 charges to run consecutively)	· 18 months' imprisonment

UN-DRPK Reg offences

37 In the absence of any *UN-DPRK Reg* offences in Singapore, the Prosecution relied on the sentencing approach adopted by the New Zealand District Court in *New Zealand Customs Service v Pacific Aerospace Limited* [2018] NZDC 5034 ("*NZ Customs Service*"). The Prosecution highlighted four offence-specific factors in the above case that determined sentence:[note: 16]

(a) the nature of the breach;

(b) the offender's culpability in respect of the breach;

(c) the impact of the offending on a country's international reputation; and

(d) the value of the exported items.

38 The Prosecution also proposed adopting the sentencing matrix approach set out in *Logachev Vladislav v Public Prosecutor* [2018] SGHC 12 ("*Logachev*"). The sentencing matrix approach assessed the seriousness of the offence based on the harm caused by the offence and the offender's culpability. The Prosecution assessed the harm caused by the *UN-DPRK Reg* offences for both Ng and T Specialist to be slight. This is because the nature of the breach related to the sale of designated luxury items, which was less serious as compared to military equipment.

39 The Prosecution also relied on an impact statement from Singapore's Ministry of Foreign Affairs ("MFA"), which highlighted the appreciable harm caused to Singapore's reputation and international standing, as well as increased risk for the broader Singapore financial and economic sectors because of the offences.[note: 17]

40 The Prosecution assessed the culpability of both Ng and T Specialist as medium. This is because Ng and T Specialist had committed the breaches of the UN sanctions with full knowledge of the breach. In addition, T Specialist's sole business was to supply goods to the DPRK.[note: 18] Accordingly, the Prosecution submitted for the following sentences for both Ng and T Specialist:

Accused person	**Offence**	**Sentence**	**Global Sentence**
Ng Kheng Wah	· UN-DPRK charges (pre-amendment) · UN-DPRK charges (post-amendment)	· 1 to 2 months' imprisonment term per charge · 2 to 3 months' imprisonment term per charge	· At least 4 months' imprisonment term
T Specialist	· UN-DPRK charges (pre-amendment) · UN-DPRK charges (post-amendment)	· Fine $30,000 per charge x 9 charges · Fine of $200,000 per charge x 1 charge	· Fine $470,000

Cheating Offences

41 The Prosecution acknowledged that the five banks suffered no actual loss as Ng had made full restitution for the cheating offences, and that this was a substantial mitigating factor.[note: 19] However, the Prosecution submitted that there was *risk of loss* for all five-victim banks. During the period when the offences were committed, at any point in time, there was a shortfall in the realisable value of security pledged to any particular bank, compared to the value of the banking facility extended by the bank. All the banks confirmed that they did not ascribe any tangible value on personal or corporate guarantees. These guarantees only serve as a form of "additional comfort" to them.[note: 20] The Prosecution further submitted that Ng was the directing mind of the fraud, the offences were highly premeditated, Ng had roped in a third party, Wang, to assist in his

criminal enterprise and the large number of charges preferred against Ng. Further, as a matter of public policy, offences that affected the integrity of financial institutions in Singapore, are treated very seriously and must be deterred. The Prosecution relied on *Public Prosecutor v Muthupandian s/o M Shuamugiah & Anor* [2016] SGDC 301[note: 21] ("*Muthupandian*") and sought a 1-year imprisonment term for each cheating charge, with three charges to run consecutively. The total sentence sought for the cheating charges against Ng was 3 years' imprisonment.

42 Given that Wang played a less active role in the invoice financing fraud, the Prosecution sought a 6-month imprisonment term for each cheating charge, with three charges to run consecutively. The total sentence sought for the cheating charges against Wang was 18 months' imprisonment.

CDSA offences

43 Prosecution impressed on this court that deterrence is the primary sentencing consideration for T Specialist's CDSA offences due to the high sums of money laundered (approximately $5.4 million). T Specialist also committed the CDSA offences with full knowledge that the predicate offence of cheating the banks was serious and took steps to layer the funds through BVI companies. Nevertheless, as T Specialist pleaded guilty and was untraced, the Prosecution sought a fine of $300,000 for each proceeded charge against T Specialist, with two charges to run consecutively. The total fine sought was $600,000.

The Defence Submissions

Ng Keng Wah and T Specialist

44 The Defence Counsel for Ng and T Specialist sought the following sentences on behalf of their clients:[note: 22]

Accused person	**Offence**	**Sentence**	**Global Sentence**
Ng Kheng Wah	· UN-DPRK charges · Cheating charges	· 1 month imprisonment per charge (2 charges to run consecutively) · 8 to 10 months' imprisonment per charge (3 charges to run consecutively)	· 26 to 32 months' imprisonment term
T Specialist	· UN-DPRK charges · CDSA charges	· Fine of $20,000 per charge x 10 · Fine of $100,000 x 2	· Fine of $400,000

Salient points of the Defence submissions

45 Unlike the Prosecution, the Defence primarily relied on the offence-specific and offender-specific factors raised in *Logachev* in assessing the harm caused by the supply of designated luxury goods to the DPRK and their client's culpability, *without* reference to the sentencing matrix approach adopted in *Logachev*.

46 In the absence of relevant precedents, the Defence sought to rely on the characterisation of "luxury goods" and the objectives of the UN *Implementation Assistance Notice No.3*[note: 23] ("*Notice No.3*") in assessing the harm caused by the supply of designated luxury items to the DPRK.

47 The Defence submitted that the harm caused by the supply of designated luxury items to the DPRK was slight because:

(a) the sale of designated luxury goods consisted of only a small fraction of T Specialist's trade with the DPRK;

(b) until 8 November 2017, there was no complete prohibition of trade with the DPRK in Singapore;

(c) the designated luxury items supplied by T Specialist appeared to fall outside the type of luxury items envisaged by *Notice No.3*. The designated luxury items were not superior products, did not belong to preferred brands and were not status symbols; and

(d) the designated luxury items supplied were not of high quality or belonged to premium brands and were intended to be sold to ordinary citizens of the DPRK. Ng and T Specialist were not in a position to know if the designated luxury items were meant for sale to the ruling elite or any internationally sanctioned DPRK national or entity.

48 With respect to the cheating charges, the Defence stressed that the harm caused was low as the banks did not suffer any actual losses and were never at risks from suffering from potential losses. With respect to their client's culpability, the Defence submitted that both Ng and T Specialist were not profit motivated. Rather, Ng suffered losses in terms of bank administrative charges and currency exchange rates by utilising the banks' trade financing scheme. T Specialist also had to pay taxes to the IRAS for income it had not earned.[note: 24]

49 With respect to the CDSA charges, the Defence submitted that Ng and T Specialist did not intend to use the moneys disbursed by the banks for any illegal purposes. Instead, the moneys were used to overcome T Specialist's short-term cash flow issues due to Li Ik's delayed payments and to repay the banks for the use of their trade financing facilities.

50 The Defence also urged the court to consider the following mitigating factors:

(a) Ng and T Specialist's early plea of guilt;

(b) Ng and T Specialist are first-time offenders;

(c) Ng had demonstrated a high level of cooperation with the CAD;

(d) Ng's good character and his personal circumstances, including:

(i) Ng had suffered from financial hardship as a result of huge losses incurred through trade with Li Ik; and

(ii) Ng's various medical conditions, including a recent stroke suffered on 28 August 2019.

Response to the PP' submissions

51 In response to the PP's submissions, the Defence urged the Court to:

(a) place no weight on *Public Prosecutor v Wan Teck Guan (DAC 926059-2014 & Ors)("Wan Teck Guan")* which relates to an offender who had dealings with a sanctioned individual linked to a convicted war criminal:

(i) The harm caused in the present case was far less severe than *Wan Teck Guan* as Ng and T Specialist merely supplied designated luxury items in the context of legitimate commercial trade, which in turn forms a small fraction of otherwise legitimate business activity;

(b) to disregard or place little weight on the MFA impact statement as it does not state factors which are *relevant to sentence* pursuant to Section 228(c) of the Criminal Procedure Code, (Cap 68, 2012 Rev Ed):

(i) The Defence maintained that in absence of a formal ban on commercial trade with the DPRK until 8 November 2017, Ng and T Specialist had carried out legitimate commercial trade with the DPRK. There was also no evidence that such commercial trade with DPRK nor the sale of designated luxury goods to the DRPK were connected to the DPRK's nuclear weapons programme. Accordingly, it was not clear how Singapore's financial system and international reputation had been undermined.

(c) disregard the Prosecution's proposed sentencing matrices for two reasons:

(i) the sentencing matrices were not able to identify the "principal factual elements" of the offences committed by Ng and T Specialist;[note: 25]

(ii) the sentencing matrices ignore how the weight and quality of each principal factual element affects the categorisation of the case between specific matrices within the overarching matrix.[note: 26]

(d) disregard the Prosecution's characterisation of personal and corporate guarantees relating to the cheating offences. The Defence submitted that the proper enquiry was whether there was any risk of loss to the bank at the point in time where the bank disbursed a specific amount of facility extended. The Defence argued that there was no risk of loss because the value of the properties and the guarantees pledged exceeded the specific amount disbursed until the banks were repaid.

Wang Zhiguo

52 Defence Counsel for Wang relied on *Muthupandian* and sought 5 to 6 months' imprisonment term per cheating charge, with two charges to run consecutively.[note: 27] The global sentence sought was **10 to 12 months' imprisonment term**. The Defence stressed that Wang's culpability is low and the severity of his actions were greatly diminished as:

(a) the Transactions and/or use of the invoices caused no loss and no risk of loss to the banks at any point in time;

(b) there was no greed or malice on the part of Ng and Wang;

(c) Wang did not stand to gain nor profit from the use of the invoices and/or the Transactions;

(i) Wang did not receive any commission for assisting Ng in the invoice financing fraud and had absorbed the bank charges for currency conversion for Outgoing Remittances.

(ii) Wang left the preparation of the invoices entirely in Ng's hands.

(iii) Wang acted purely out of good will and for the purposes of helping a friend out.

(d) Wang was not aware of the extent of the Transactions at the material time; and

(e) Wang's culpability was far lower as compared to Ng as he played a limited role in the invoice financing fraud.

Decision of the Court

UN-DPRK Sanctions Offences

53 The present case is unprecedented in Singapore. In the absence of any sentencing precedents in respect of the *UN-DPRK Reg* offences, I took guidance from the sentencing approach adopted in *Ye Lin Myint v Public Prosecutor* [2019] SGHC 221 ("*Ye Lin Myint*") in assessing sentence, having regard to the:

(a) legislative objective of the *UN-DPRK Reg*;

(b) prescribed punishment under Section 5(1) of the UN Act;

(c) sentencing principles for transnational crime;

(d) sentencing approach in other jurisdictions for similar offences; and

(e) sentencing matrix approach adopted in Singapore.

Legislative intent of the UN-DPRK Reg

54 The legislative intent of the *UN-DPRK Reg* is to give effect to the UNSC's resolutions against the DPRK.[note: 28] According to the Minister for Law and the Minister for Foreign Affairs ("the Minister"), Prof. S. Jayakumar (as he then was), any failure to give effect to the UNSC's resolutions constitutes a breach of Singapore's international obligations and may result in serious consequences for Singapore, such as censure and sanctions by the UNSC:

> "Singapore is a member of the United Nations. Like all other members of the United Nations, we are legally bound by the UN Charter to implement mandatory resolutions of the UN Security Council. **A failure to give effect to the measures mandated by the Security Council would be a breach of our international obligations for which Singapore may be subject to censure and sanctions by the Security Council**…"[note: 29]

MFA impact statement

55 Ng's and T Specialist's breaches of UN sanctions against the DPRK had subjected Singapore to international scrutiny and criticism. The investigations of the UNSC Panel was widely publicised in both international and local media. Critically, this affected Singapore's reputation and standing with its international partners. The breaches also raised questions of Singapore's commitment to the UN sanctions regime. Further, unlike *NZ Customs Service*, Ng's and T Specialist's breaches also had direct consequences on Singapore's economic reputation and competitiveness. Following the breaches, in 2018, the United States unilaterally imposed sanctions against 10 Singaporean individuals and entities, which traded with the DPRK.

Prescribed punishment for Regulation 5(a), UN DPRK

56 Regulation 5(a) of the *UN-DRPK Reg* ("Regulation 5(a)") makes it illegal for any person in Singapore or citizen outside Singapore to supply, sell or transfer, directly or indirectly, any designated luxury item to any person in the DPRK. A breach of Regulation 5(a) is punishable under Section 5(1) of the UN Act. Since 10 March 2014, this punishment provision has been amended as follows:

Before 10 March 2014	**10 March 2014**
An offender in breach of Regulation 5(a) is liable on conviction to **a fine not exceeding $100,000** or to **imprisonment for a term not exceeding 5 years** or to both.	An offender in breach of Regulation 5(a) is liable on conviction: (a) in the case of an individual, to **a fine not exceeding $500,000** or to **imprisonment for a term not exceeding 10 years** or to both; or (b) in any other case, to **a fine not exceeding $1 million**.

57 Following the amendment of Section 5(1) of the UN Act, with effect from 10 March 2014:[note: 30]

(a) the maximum fine was raised five-fold from $100,000 to $500,000;

(b) the maximum imprisonment term was doubled from 5 to 10 years; and

(c) the maximum fine was raised ten-fold from $100,000 to $1 million.

58 Although Section 5(1) of the UN Act was amended to achieve consistency relating to the punishment of terrorism-related legislation,[note: 31] this punishment provision applies to all subsidiary legislation prescribed under the UN Act, including Regulation 5(a) of the *UN-DPRK Reg*.

Sentencing principles applicable to transnational crime

59 The supply of designated luxury items to the DPRK is a transnational crime as it involves cross-border trade with a sanctioned country in breach of the *UN-DRPK Reg*. Given that a transnational element is involved in the present offence, I am of the view that deterrence is the dominant sentencing consideration.[note: 32] In *Logachev* at [54] – [55], Menon CJ explained that a transnational element aggravates an offence because of the increased difficulties which it presents to law enforcement. Citing *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [42], Menon CJ stated:

> I should highlight that a particularly important and relevant consideration in the present case is the "international dimension" involved. The respondent had been part of a *foreign syndicate* which had systematically targeted financial institutions *in Singapore* to carry out its criminal activities. ***The audacity and daring of such a cross-border criminal scheme must be unequivocally deplored and denounced. There is a resounding and pressing need to take a firm stand against each and every cross-border crime, not least because the prospect of apprehending such foreign criminals presents an uphill and, in some cases, near impossible task.*** [emphasis in original in italics; emphasis added in bold italics]

60 Similarly, I adopt the approach in *Yongyut*, endorsed by Menon CJ in *Logachev*. Nevertheless, I am mindful that a distinguishing factor of *Law Aik Meng* and *Yongyut* is that these cases concerned foreign syndicated crimes affecting the permeation of criminality within Singapore's borders and the recruitment of locals into transnational criminal enterprise. On the other hand, Ng's and T Specialist's offending conduct relates to illegal transnational trade in violation of UN sanctions against the DPRK. This in turn undermines the effectiveness of the UNSC's sanctions regime. Therefore, the sentencing approaches adopted in other jurisdictions relating to breaches of UN sanctions would provide a useful guide in determining the appropriate sentence in such transnational crimes.

Sentencing approaches in other jurisdictions

61 There are relatively few cases relating to the breach of UN sanctions in other jurisdictions. Generally, the courts have treated a breach of UN sanctions as a grave offence, which would attract a custodial sentence, where the offender is an individual. Where the prohibited items exported are not military equipment, the sentences range from 6 months' imprisonment term to 8 years' imprisonment term.

United Kingdom

62 The United Kingdom considers a breach of UN sanctions a very grave offence because the said breach defeats the very purpose for which the sanctions were imposed. In *R v Anthony Thomas William Fox* (1994) 16 Cr App R (S) 370 ("*Fox*"), the lower court held that a breach of UN sanctions was serious as it gave "comfort to [regimes] which was openly defying the rule of law stemming from a resolution of the Security Council designed to try and bring justice particularly for the citizens of [the UK] and the United States". In *Fox*, the offender had exported aircraft parts to Libya without a licence with full knowledge of the breach. The aircraft parts were for an aircraft used to transport workers to oil fields. Although the aircraft parts were low technology goods and the profit made was small, Fox was sentenced to 6 months' imprisonment term at first instance. His sentence was eventually reduced to a fine £1,500 due to the offender's personal circumstances.

New Zealand

63 In *NZ Customs Services*, the court considered the impact the breach had on New Zealand's international reputation and its consequential impact on the export trade, which could have potential "catastrophic consequences [on New Zealand's export industry] which could be difficult to recover from". [note: 33] In *NZ Customs Services*, the Defendant company, PAL, had exported aircraft warranty parts to Freesky Aviation company, a China-based company, knowing that the parts would be sent to the DPRK.[note: 34] The breach was detected when the aircraft was flown in a DPRK air show. Although the value of the warranty parts were low, given that the nature of the breach related to warranty parts of an aircraft, the court placed PAL's sentence at a higher starting point as compared to other luxury goods. Further, PAL had persisted with the breach for about 6 months. PAL was fined NZ$24,935 per charge. The total fine was NZ$ 74,805.[note: 35]

Canada

64 In *R v Yadegari* 2011 ONCA 287 ("*Yadegari*"), the offender had attempted to transport pressure transducers to Iran in breach of UN sanctions. Pressure transducers were dual use products. They could be used for lawful commercial applications but could also be used to enrich uranium, which was an important component for nuclear testing. Whilst the Canandian Court of Appeal ("CCA") ruled that there was no evidence to suggest the offender knew that the pressure transducers were intended for use for nuclear-related purposes, the CCA stated that general deterrence was of paramount importance given the potential harm involved. The CCA also noted that the offender was persistent in acquiring the transducers and deceptive in his attempt to export them. However, the CCA took into account that there was insufficient proof that the transducers were to be used for a nuclear-related purpose. On this basis, the offender who had by then been in pre-sentence detention for 31 months, had the same taken into account, and accordingly, his sentence was reduced from 8 months' to 5 months' imprisonment. The present case ought to be distinguished from *Yadegari* as the nature of the goods supplied (designated luxury goods) are far less serious as compared to pressure transducers, which could potentially be used to facilitate nuclear-related activities.

United States

65 The United States considers breaches of UN sanctions as threats to its national security and foreign policy. Accordingly, the starting point for such cases is generally relatively high, ranging from 63 to 78 months' imprisonment term:[note: 36]

(a) In *US v Harb* 111 F.3rd 130 (1997), Harb had exported technological products to Iraq in contravention of UN sanctions. Harb had a long standing trade relationship with Iraq prior to the sanctions and was aware of the UN sanctions. Harb also concealed the fact that the end users of his products were from Iraq. Harb was convicted after trial and was sentenced to 8 years' imprisonment term. The sum of US$420, 028.52 was forfeited. The sentence was upheld on appeal.

(b) In *US v David McKeeve* 131 F.3d (1997) US App, McKeeve transported computer products to Libya in breach of UN sanctions. McKeeve was sentenced to the low end of the US Federal Sentencing Guidelines at 51 months' imprisonment term.[note: 37] The court held that the sentence was appropriate because the sale of computer products to Libya, a sanctioned country, offended the embargo envisaged by UN sanctions, whether or not the goods shipped actually are intended for some innocent use.

(c) In *US v Elashyi* 554 F.3d 480 (2008), the offenders were members of a small family run business which supplied computer products to Libya via Malta in breach of UN sanctions. Sanctions were imposed on Libya as it was a state sponsor of terrorism. The court held that the conduct of the offenders were export violations which evaded "national security controls". As such, as a starting point, the range of sentences was between 63 to 78 months' imprisonment term. [note: 38] Citing *McKeeve*, the Court held that the above-mentioned range applied where a shipment or proposed shipment that offends the embargo, whether or not the goods shipped were actually for some innocent use, since the export regulations targeted against sponsors of terrorism.

66 Nevertheless, having considered the MFA impact statement, Ng's and T Specialist's violations of UN sanctions did not directly threaten Singapore's national security and foreign policy in the manner contemplated by the United States.[note: 39] To this extent, the sentences imposed in the United States for similar breaches are not directly relevant to the present case.

Common sentencing factors considered in overseas jurisdictions

67 A survey of the sentencing approaches in other jurisdictions indicates that the following factors are relevant in determining sentence for breaches of UN sanctions:

(a) the nature of the breach;

(b) the relationship between the breach and the objective of the sanction;

(c) the duration of the breach;

(d) whether the offender had deliberately breached the sanctions with full knowledge of the sanctions; and

(e) whether the offender had taken any evasive actions in breach of sanctions.

Sentencing approach in Singapore

68 When evaluating the seriousness of a crime, a sentencing court would generally have regard to the harm caused by the offence and the offender's culpability. Harm is a measure of the injury caused to society by the commission of the offence, while culpability is measure of the degree of relative blameworthiness disclosed by the offender's actions and is assessed chiefly in relation to the extent and manner of the offender's involvement in the criminal act.[note: 40]

The use of sentencing matrices

69 In the absence of relevant local precedents and the varied range of sentences imposed in other jurisdictions, I took guidance from *Ye Lin Myint v Public Prosecutor* [2019] SGHC 221 ("*Ye Lin Myint*"). In *Ye Lin Myint*, Menon CJ at [42] opined that it was possible for a court to develop a sentencing framework from first principles where there is a dearth of authorities.

70 Whilst I am mindful of Defence Counsel's caution in relying on the Prosecution's sentencing matrices where the "principal factual matrices" cannot be easily defined, [note: 41] I adopt the two-stage, five-step sentencing framework set out in *Ng Kean Meng Terrence v Public Prosecutor*[note: 42], adapted in *Logachev*[note: 43] and endorsed by Menon CJ in *Ye Lin Myint*. This sentencing framework ("Framework") assesses the seriousness of the offence by reference to all the offence-specific factors rather than just "principal factual elements". These offence-specific factors are further divided into factors, which go to the offender's culpability and the harm caused by the offender's actions.

71 The Framework seeks to[note: 44]:

(a) identify the offence-specific factors in order to identify:

(i) the harm caused by the offence; and

(ii) the level of the offender's culpability.

(b) identify the applicable indicative sentencing range;

(c) identify the appropriate starting point[note: 45] within the indicative sentencing range;

(d) make adjustments to the starting point to take into account offender-specific factors; and

(e) make further adjustments to take into account the totality principle.

Level of Harm and Culpability

72 In the present case, the supply of designated luxury goods are far less serious than the supply of military equipment such as pressure transducers in *Yadegari*. Further, there is no evidence to suggest that the said designated luxury items or the proceeds of the sale of the said items were used to facilitate the DPRK's nuclear weapons programme.

73 However, the breaches were committed for a protracted period of 7 years between November 2010 and January 2017, and during a period where the DPRK had actively launched nuclear-related weapons in the region on 16 occasions. In this context, Ng's and T Specialist's breaches, like *Fox*, indirectly gave comfort to regimes such as the DPRK, which openly defy the rule of law stemming from the UNSC resolutions.

74 I have also considered the contents of *Notice No.3*. However, I am unable to agree with the submission by the Defence that less harm is caused where the designated luxury items fall outside the type of luxury items envisaged by *Notice No.3* and consist only a small fraction of T Specialist trade with the DPRK. As highlighted in *McKeeve*, the crux of the offending conduct was the breach of the UN sanctions, which in turn undermines the UN sanctions regime. Therefore, it is immaterial that the items exported were intended for an innocent use or that they were intended for sale to the ordinary citizens of the DPRK.[note: 46]

75 Offences which impact Singapore's international reputation will almost invariably be serious, given the potential consequences that arise for Singapore's entities and financial institutions. Unlike *NZ Customs Services*, the breaches not only negatively affected Singapore's reputation and international standing, but also increased risks for the broader Singapore financial and economic sectors. According to MFA's impact statement, at least ten Singaporean individuals/entities were subject to US sanctions against the DPRK. [note: 47] Further, in response to the Panel's report, the *Asahi Shimbun*, a Japanese national newspaper, published an article dated 28 December 2018, referring to the Korean Bugsae shop as the "Singapore shop". Its headline "North Korea 'Singapore shops' reveal familiar sanction gaps" appear to question Singapore's commitment to the UN sanctions regime.[note: 48] Thus, there are real and not merely potential consequences arising from Ng's and T Specialist's breaches. Accordingly, whilst I agree with the Prosecution that the harm caused is slight, I am of the view that the harm caused ought to be placed in the higher end of the spectrum.

76 In terms of culpability, I agree with the Prosecution that the culpability of both Ng and T Specialist is medium. Ng and T Specialist had continually breached the UN sanctions with full knowledge of the sanctions regime for a protracted period of about 7 years. The fact remains that the offences were undetected and deceitfully camouflaged for 7 years, whether or not the supply of designated luxury goods to the DPRK was T Specialist's sole business or combined with other commercial trade. Thus, the breaches were profit motivated.[note: 49]

77 It is significant that such breaches are difficult to detect. In fact, these breaches only surfaced following the UNSC Panel investigations.[note: 50] Such difficulty in detection was further compounded as Ng and T Specialist had taken evasive actions such as supplying the designated luxury items via transhipment through Dalian, China and deliberately failed to declare the final port of delivery to Singapore Customs. [note: 51]

Indicative sentencing range and starting points

78 I am in general agreement with the Prosecution's proposed sentencing ranges for Ng and T Specialist. However, as the nature of the designated luxury goods exported in the present case is far less serious as compared to the export of aircraft warranty parts in *Fox* and *NZ Customs Services*, the sentence meted out against Ng and T Specialist ought to be less than the sentences imposed on the offenders in *Fox* and *NZ Customs Services*.

Adjustments taking into account offender-specific factors

79 With reference to the sentences meted out in *NZ Customs Services* (4 months' imprisonment)[note: 52] and *Fox* (6 months' imprisonment term), depending on the value of designated luxury items exported to the DPRK, a sentence between 1 to 2 months' imprisonment for each pre-amendment charge against Ng would be in order.

80 With respect to the post-amendment *UN-DPRK Reg* charge, given that the maximum sentence had doubled, ordinarily, the appropriate sentence would have been about 8 months' imprisonment. However, when there has been legislative amendment of the maximum prescribed punishment, this does not mean that the sentence would automatically increase.[note: 53] Parliament did not intend to effect a general increase in sentence for all affected offences.[note: 54] Ultimately, whether a higher sentence is warranted must still depend on careful consideration of the gravity of the offending conduct in each case.[note: 55] Bearing in mind that the sentence meted out against the offender in *Fox* was 6 months' imprisonment, I am of the view that in the present factual matrix a sentence of 3 months' imprisonment is appropriate.

Should an additional fine be imposed?

81 Section 5(1) of the UN Act also provides that an individual may be sentenced to a fine of up to $500,000. Generally, a fine would be imposed in addition to an imprisonment term where an offender has made a large profit from the offence. The purpose of imposing such a fine is to disgorge an offender's substantial financial benefit from his offending.[note: 56] In egregious cases, a custodial sentence in combination with fines would better address and redress the differing degrees of culpability in a range of offences, serving to deter the appropriate class of potential offenders, without being excessively harsh to the particular offender being convicted and sentenced.[note: 57]

82 The rationale for imposing a fine for its confiscatory benefit is to get an offender to disgorge his profit, gain or benefit. As a starting point, the total earnings, takings or revenue received by an offender, would represent his profit, if there were no other evidence showing what the offender has expended.[note: 58] The burden falls on the offender to adduce evidence of expenses incurred. Further, the offender's ability to pay the fine is a significant factor when considering the quantum of the fine to be imposed.[note: 59]

83 In the present case, the total value of designated luxury goods supplied to the DPRK across all the 10 proceeded charges against Ng was $2,573,858.81. The total value of designated luxury goods supplied to the DPRK across all the charges (including the charges taken into consideration for sentencing) amounted to US$49,781.30 and $ 6,018,546.89.[note: 60] Applying the principle in *Koh Jaw Heng*, as a starting point, the total earnings of Ng, which represented his profits, being US$ 49,781.30 and $6,018,546.89, ought to be confiscated. The Defence claimed that Ng and T Specialist had suffered losses amounting to US$65,644.242.07 as a result of Li Ik's frequent delayed payments.[note: 61] However, the extent to which these losses represented expenses incurred during the period when the offences were committed from November 2010 to January 2017 was not clear from the facts.

84 On the other hand, in order to overcome cash flow problems and generate liquidity for T Specialist resulting from the illicit trade in designated luxury goods supplied to the DPRK, Ng had incurred expenses in the form of bank administrative charges from 2014 to 2016 amounting to $93,979.83.[note: 62] Taking into account the above expenses, ordinarily, a fine of $6,000,000 would be appropriate in order to disgorge profits arising from the illicit trade in designated luxury goods to the DPRK.

85 However, in the absence of any evidence to the contrary, I accept that Ng had suffered significant losses amounting to US$65,644,242.07 as a result of his illicit trade in designated luxury goods to the DPRK. These losses far exceed the profits he would have made during the period of the offences from November 2010 to January 2017. In the circumstances, I am of the view that it would be inappropriate to impose a fine in addition to a custodial sentence against Ng in the present case.

86 With respect to T Specialist, the Prosecution submitted that the appropriate sentencing range for the pre-amendment *UN-DPRK Reg* charges is between $16,667 and $33,333. The Prosecution sought a sentence of $30,000 for each pre-amendment *UN-DPRK Reg* charge taking into account that the harm caused was slight and the accused's culpability was medium. For the post-amendment *UN-DPRK Reg* charge, the Prosecution submitted that the appropriate sentencing range is between $166,667 - $333,333.33, and sought a sentence of $200,000 for similar reasons.

87 As the maximum fine for the pre-amendment *UN-DPRK Reg* charges is the same as the maximum fine for the equivalent New Zealand legislation (i.e. $100,000), I agree with the Prosecution's sentencing range. However, bearing in mind that the Defendant company, PAL, in *NZ Customs Services* was sentenced to NZ$24,935 for the sale of aircraft warranty parts to the DPRK, which was more serious as compared to the sale of designated luxury goods, I am of the view that a sentence of $20,000 for each pre-amendment *UN-DPRK Reg* charge is appropriate.

88 As for the post-amendment *UN-DPRK Reg* charge, in order to deter businesses from using companies as a facade for illicit transnational trade in breach of UN sanctions, a ten-fold increase to a fine of $200,000 is justified.

Cheating Offences

No loss suffered by the victim banks

89 A substantial mitigating factor raised by Defence Counsel and accepted by the Prosecution, was that the five banks suffered no actual loss as a result of the cheating offences. Ng had made full restitution for the fictitious invoice financing loans.[note: 63] Further, Ng had fully repaid his trade financing obligations to the five banks in September 2016, prior to the commencement of criminal proceedings against Ng and T Specialist.[note: 64]

90 It is trite law that restitution is a manifestation of contrition accompanying a genuine plea of guilt. Restitution made voluntarily before the commencement of criminal proceedings or in its earliest stages carries a higher mitigating value for it shows that the offender is genuinely sorry for his mistake.[note: 65] Ordinarily, where the victim banks suffered no actual loss, this would constitute a significant mitigating factor.

91 However, the Prosecution argued that there was risk of loss for all five victim banks, as the invoice financing facilities extended were not fully secured at any point in time during the relevant period (1 January 2014 to 25 May 2016). There was a shortfall in the realisable value of the security pledged to any particular bank, compared to the value of the banking facility limit extended by the bank. Further, all the banks confirmed that they did not ascribe any tangible value on personal and corporate guarantees, and that these guarantees serve as a form of "additional comfort" to them. [note: 66] As of 22 August 2016,[note: 67] the shortfall in value was $39,930,000. Thus, the extent of potential loss was substantial. Nevertheless, it must be noted that there is no evidence of any actual loss sustained.

No motivation for profit

92 The Defence also submitted that Ng and T Specialist were not motivated by profit and did not profit from the cheating offences. Instead, Ng and T Specialist had suffered significant losses from paying bank administrative charges and taxes to IRAS for income it had not earned.[note: 68] Whilst Ng and T Specialist did not profit from the cheating offences, very little weight ought to be placed on this factor. [note: 69] Further, unlike the offenders in *Public Prosecutor v Lam Leng Hung and other appeals* [2017] SGHC 71 ("*Lam Leng Hung*"), Ng and T Specialist had not acted purely out of altruistic reasons. Ng and T Specialist had embarked on an elaborate scheme to cheat five different banks for the sole purpose of overcoming cash flow of an illicit business in continual breach of UN sanctions for a protracted period of about 4 years since 2014.[note: 70]

93 Moreover, the fact that Ng and T Specialist had suffered losses as a result of the cheating offences should not be considered as a mitigating factor *per se*. Rather, it would have amounted to an aggravating factor if Ng and T Specialist had profited from their actions.[note: 71] In the light of the invoice financing fraud, the bank administrative charges and payment of corporate income tax for income not earned were necessary expenses for Ng and T Specialist to avoid detection from the relevant authorities.

Sentencing Precedents for Invoice Financing Fraud

94 There are few precedents under Section 420 read with Section 109 of the Penal Code, (Cap 224, 2008 Rev Ed) ("Penal Code") involving invoice financing fraud where such large loans were disbursed by the banks. To ensure consistency in the sentencing approach, I am of the view that a harm-culpability matrix adopted in the Framework ought to be applied to the cheating offences against Ng. In *Public Prosecutor v Gene Chong Soon Hui* [2018] SGDC 117 ("*Gene Chong*"),[note: 72] the court at [26] applied the Framework to offences under Section 420 of the Penal Code:

Section 420 Penal Code	Slight Harm	Moderate Harm	Severe Harm
Low Culpability	Up to 6 months imprisonment	6 months to 1.5 year imprisonment	1.5 to 3.5 years imprisonment
Medium	6 months to 1.5 year imprisonment	1.5 to 3.5 years imprisonment	3.5 to 6.5 years imprisonment
High Culpability	1.5 to 3.5 years imprisonment	3.5 to 6.5 years imprisonment	6.5 to 10 years imprisonment

95 In the present case, whilst the amount cheated was a staggering sum of approximately SGD$130 million, full restitution was made to the five banks. Whilst the risk of loss was substantial, [note: 73] no actual loss was incurred by the five banks.

96 In *Public Prosecutor v Tan Seo Whatt Albert and another appeal* [2019] SGHC 156 ("*Albert Tan*"), Hoo J at [93] found that the harm caused where the potential risk of loss is significant ($8,991,000) was in the moderate to high range. However, as there was no evidence of actual loss,[note: 74] the harm caused was adjusted to the moderate range. Similarly, in the present case, as a starting point, the level of harm should be in the moderate to high range. I have adjusted harm caused to the highest end of the slight range because the banks suffered no actual loss.

97 In terms of culpability, I agree with the Prosecution that there was a high degree of premeditation involved. Ng had engaged in an elaborate scheme to cheat five financial institutions. He had roped in Wang to facilitate the fraud against the banks and took steps to layer the fund transfers in order to avoid detection. Nevertheless, Ng also cooperated closely with the authorities including persuading Wang to come clean regarding his involvement. Accordingly, I am of the view that Ng's culpability is moderate. Thus, as a starting point, the appropriate sentencing range would be between 6 months' to 18 months' imprisonment. Considering the harm caused, I assess the indicative starting sentence to be 18 months' imprisonment.

98 I have also considered the cases of *Muthupandian* and *Tan Thiam Wee v Public Prosecutor* [2012] 4 SLR 141 ("*Tan Thiam Wee*") and the submissions made before me. Whilst I am aware that the Prosecution's proposed sentence of 12 months' imprisonment term had factored the fact that no actual loss was suffered by any of the five victim banks, quantitatively, the amount cheated on each proceeded charge varies between US$1.9 million to US$2.8 million. Accordingly, taking into account the amounts cheated on a per charge basis, I am of the view that a sentence between 10 to 11 months' imprisonment per charge for the cheating offences is appropriate.

99 With respect to Wang, I agree with submissions by Prosecution and his counsel that Wang's culpability was clearly lower when compared to Ng and T Specialist as he had played a relatively less active role in the fraud. Nevertheless, for similar reasons raised with respect to Ng and T Specialist, I am unable to fully accept that Wang had acted purely out of goodwill to help Ng. Wang did play a pivotal role in facilitating the fraud.

100 Nevertheless, having considered *Muthupandian*, given that no actual loss was sustained by the banks and in the absence of any evidence that Wang had benefited from the fraud, I am of the view that a sentence of 6 months' imprisonment term per charge is appropriate.

Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act ("CDSA") offences

The nature of money laundering activities

101 In *Ang Jeanette v Public Prosecutor* [2011] 4 SLR 1, VK Rajah JA stated at [75] that money laundering is an indivisible part of international criminal activity and is detrimental to society. The unimpeded circulation of proceeds from the crime will have a prejudicial effect on the fabric of society and the economy. Thus, the criminalisation of money laundering has as its objective the undermining of crime by removing from circulation the proceeds of predicate crimes.

Sentencing Framework for CDSA offences

102 Presently, there are few precedents available for prosecutions against companies for offences under Section 47(1)(c) punishable under Section 47(6) of the CDSA. In *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 ("*Huang Ying-Chun*") See J considered that it was appropriate to develop a sentencing framework (modelled on the *Logachev* framework) for Section 44(1)(a) CDSA offences involving cash laundering. Section 44(1)(a) CDSA offences relate to assisting another to retain the benefits from criminal conduct. I am of the view that this approach of See J is one which can be applied to offences under Section 47(1)(c) punishable under Section 47(6) of the CDSA.

103 The relevant sentencing considerations in calibrating a sentence for a CDSA offence are summarised in the table below. This list is non-exhaustive:[note: 75]

Offence-specific factors	
Factors going towards harm	Factors going towards culpability
(a) the amount cheated (b) involvement of a syndicate (c) involvement of a transnational element (d) the seriousness of the predicate offence (e) harm done to confidence in public administration	(a) the degree of planning and premeditation (b) the level of sophistication (c) the duration of offending (d) the offender's role (e) abuse of position and breach of trust (f) the mental state of the offender (g) whether commission of offence was the offender's sole purpose for being in singapore (h) the offender's knowledge of the underlying predicate offence (i) the prospect of a large reward
Offender-specific factors	
Aggravating factors	Mitigating factors
(a) offences taken into consideration for sentencing purposes (b) relevant antecedents (c) evident lack of remorse	(a) a guilty plea (b) voluntary restitution (c) cooperation with the authorities

104 I am of the opinion that the following factors are most relevant in assessing the harm caused by the CDSA offences and the culpability of T Specialist:[note: 76]

(a) the amount cheated: The value of the moneys laundered is a useful proxy for the harm caused by the offence.[note: 77] However, it should not be the sole or overriding metric by which harm is assessed;

(b) the transnational element: the transnational nature of a CDSA offence is significant because the CDSA and its predecessor legislation were intended to combat cross-border crimes and protect Singapore's hard-earned reputation as a global financial hub;[note: 78]

(c) the seriousness of the predicate offence: the seriousness of the predicate offence contributes to the harm caused by the offence.

(d) the mental state of the offender: an offender who has actual knowledge of the criminal nature of the proceeds is more culpable than an offender who has reasonable grounds to believe that the proceeds are of criminal nature.[note: 79]

(e) the offender's knowledge of the underlying predicate offence: the extent and degree of the offender's knowledge of the underlying predicate offence is relevant to his or her culpability for the CDSA offence.

Application to the present case

105 In the present case, the total amount of moneys laundered was very high – US$5.4 million.[note: 80] Applying the Framework to the CDSA offences, where the amount of monies laundered were between S$573,000 – S$765,000 on a per charge basis, I agree with the Prosecution that as a starting point, the harm caused was moderate.

106 In terms of culpability, I agree with the Prosecution that as a starting point, T Specialist's culpability was high. T Specialist had committed the CDSA offences with full knowledge that the predicate offence was a serious offence of cheating not one but five banks. Further, there was a level of sophistication involved in concealing the criminal benefits as T Specialist had taken steps to layer the funds through BVI companies in order to avoid detection over a period of 1 month.[note: 81] Thus, as a starting point, I am of the view that the appropriate sentencing range is between $250,000 to $300,000.

107 On the other hand, the Defence had argued that the moneys laundered were never intended to be used for any illegal purposes. The sole purpose of using the moneys laundered was to settle the amounts T Specialist owed to the banks for the use of trade financing facilities.[note: 82] In *Luciana*, See JC (as he then was) held that the absence of an aggravating motive could be taken into account as a factor that warranted the imposition of a lower sentence. However, this was not a general rule. Rather, the court has to consider the nature of the offence and the profile of the offender in deciding whether the absence of an aggravating motive was a factor that warranted a sentencing discount and the weight accorded to it. [note: 83]

108 I am of the view that the facts of the present case can be distinguished from *Luciana*. Whilst both T Specialist and the offender in *Luciana* had committed the offences in question for the sole purpose of repaying moneys owed, the context of the offending differed. In *Luciana*, the court recognised that the offender's plea was that she ought to be treated less harshly than the usual run of the mill CBT offender who was usually motivated by avarice. [note: 84] At the material time, the offender was under continued pressure from unlicensed moneylenders and her sense of helplessness had contributed to her offending.[note: 85]

109 Whilst the predicate offence of cheating the five banks were committed ostentatiously to overcome T Specialist's cash flow problem and to repay the banks for the use of trade financing facilities, the predicate offences were in fact committed to facilitate T Specialist's illicit trade in designated luxury goods to the DPRK in breach of UN sanctions since 2014. T Specialist was aware that Li Ik had consistently defaulted on his payments for designated luxury items supplied since 2013 and had every opportunity to disengage from the illicit trade with the DPRK but had chosen not to do so. Accordingly, I am of the view that the fact that the moneys laundered were never intended to be used for an illegal purpose is at best a neutral factor.

110 Nevertheless, I note that full restitution has been made to the banks for the predicate offence of cheating and no actual losses were incurred. Thus, I am of the view that a sentence of $250,000 per charge is appropriate.

Totality Principle

111 I am also satisfied that the sentences imposed for each individual offence do not offend the totality principle.

Conclusion

112 In the circumstances, I imposed the following sentences:

Ng Kheng Wah

Offences	Charge Number	Sentence per charge	Consecutive sentences	Global Sentence per offence
UN-DRPK Reg	DAC 923262-2018 (pre-amendment charge)	**1 month imprisonment term**	DAC 923262-2018 & DAC 923271-2018 to run consecutively.	4 months' imprisonment term
	DAC 923271-2018 (post-amendment charge)	**3 month's imprisonment term**		
	DAC 923238-2018 (pre-amendment charge)	1 month imprisonment term (concurrent)		
	DAC 923213-2018 DAC 923221-2018 DAC 923250-2018 DAC 923251-2018 DAC 923253-2018 DAC 923256-2018 DAC 923261-2018 (pre-amendment charge)	2 months' imprisonment term each (concurrent)		
Cheating offences	**DAC 923285-2018**	**10 months' imprisonment term**	DAC 923285-2018, DAC 923294-2018 & DAC 923296-2018 to run consecutively	30 months' imprisonment term
	DAC 923294-2018	**10 months' imprisonment term**		
	DAC 923296-2018	**10 months' imprisonment term**		
	DAC 923282-2018 DAC 923286-2018	11 months' imprisonment term each (concurrent)		
	DAC 923289-2018 DAC 923297-2018 DAC 923298-2018 DAC 923300-2018 DAC 923303-2018			
Global Sentence				**34 months' imprisonment term**

T Specialist

Offences	**Charge Number**	**Sentence per charge**	**Consecutive sentences**	**Global Sentence per offence**
UN-DRPK Reg	DSC 900318-2018 DSC 900326-2018 DSC 900343-2018, DSC 900355-2018 DSC 900356-2018 DSC 900358-2018 DSC 900361-2018 DSC 900366-2018 DSC 900367-2018 (pre-amendment charges)	Fine of $20,000 each	-	Fine of $180,0000
	DSC 900376-2018 (post-amendment charge)	Fine of $200,000		Fine of $200,000
CDSA offences	DSC 900382-2018	Fine of $250,000		Fine of $500,000
	DSC 900384-2018	Fine of $250,000		
Global Sentence				**Fine of $880,000**

Wang Zhiguo

Offences	**Charge Number**	**Sentence per charge**	**Consecutive sentences**	**Global Sentence**
Cheating offences	DAC 908813-2019 DAC 908815-2019	**6 months' imprisonment term each**	DAC 908813-2019 & DAC 908815-2019 to run consecutively	**12 months' imprisonment term**
	DAC 908801-2019 DAC 908804-2019 DAC 908805-2019 DAC 908808-2019 DAC 908816-2019 DAC 908817-2019 DAC 908819-2019 DAC 908822-2019	6 months' imprisonment term each (concurrent)		

ANNEX 1

DAC 923197-2018 and Ors

THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

PUBLIC PROSECUTOR v.

NG KHENG WAH *and*
T SPECIALIST INTERNATIONAL (S) PTE LTD

JOINT STATEMENT OF FACTS
(Incorporating 32 Charges)

The Accused Persons

1. The first accused is Ng Kheng Wah ("**NKW**"), a 56-year-old male Singaporean, bearing NRIC No. XXX.

2. The second accused is T Specialist International (S) Pte Ltd ("**T Specialist**"). T Specialist was incorporated in Singapore on 27 August 1997 and is in the business of general wholesale trade.

3. At the material time, NKW was one of the directors of T Specialist. T Specialist was also wholly owned by TTAT Investment Pte Ltd, of which NKW was the majority shareholder.

Other Persons of Interest

4. The accomplices are:

a. Li Ik, a national of the Democratic People's Republic of Korea ("**DPRK**"). He owns a department store chain in DPRK known as the "Korean Bugsae Shop". At the material time, T Specialist was one of the said shop's main suppliers.

b. Li Hyon, a 31-year-old DPRK national bearing FIN No. XXX, and Li Ik's son. Li Hyon studied in Singapore prior to 2014. Towards the end of 2014 till the beginning of 2017, Li Hyon assisted Li Ik with his luxury goods business in Singapore.

c. Sherly Muliawan ("**Sherly**"), an Indonesian national and Singapore Permanent Resident. She is the Shipping Manager and purchaser of T Specialist.

First Information Report

5. On 7 March 2017, the Commercial Affairs Department of the Singapore Police Force filed a police report stating that it had received information that NKW and business entities related to him may be involved in money laundering activities.

Background

Breaches of Regulation 5(a) of the UN (Sanctions – DPRK) Regulations 2010

6. Pursuant to Regulation 5(a) of the UN (Sanctions – DPRK) Regulations 2010 ("**UN-DPRK Reg**"), it is illegal for any person in Singapore or citizen outside Singapore to supply, sell or transfer, directly or indirectly, any designated luxury item to any person in the DPRK. The list of designated luxury items is defined in Item (5) of the third column of Part 1 of the Seventh Schedule to the Regulation of Imports and Exports Regulations. This is a closed list including items such as "cosmetics and perfumes" and "wines and spirits".

7. Investigations revealed that from November 2010 to January 2017, T Specialist directly supplied designated luxury items to Li Ik's Korean Bugsae Shop in the DPRK, in breach of Regulation 5(a) of the UN-DPRK Reg (the "**UN-DPRK Reg Charges**"). This was done over 79 occasions on the instructions of NKW,[note: 86] although NKW was aware that such actions were in breach of the UN-DPRK Reg. The supply of designated luxury items to the DPRK was via trans-shipment through Dalian, China. NKW deliberately concealed the fact that the goods were destined for the DPRK by failing to declare the final port of delivery to Singapore Customs.

8. Sherly, as Shipping Manager and purchaser of T Specialist, oversaw the administrative details of the supply of designated luxury goods, including issuing export invoices, arranging for the shipping of the luxury items to the DPRK, and ensuring that payment is made to T Specialist. Li Ik and subsequently Li Hyon, would arrange for payment to be made to T Specialist through front companies in China and Hong Kong.

Invoice Financing Fraud

9. Investigations also revealed that towards the end of 2013, Li Ik owed T Specialist some USD 20 million owing to delayed payment for goods ordered from T Specialist. In order to overcome this cash flow problem and generate liquidity for T Specialist, NKW devised a fraudulent invoice financing scheme. From January 2014 to August 2016, T Specialist, on NKW's instructions, submitted fictitious commercial invoices on 81 occasions to five banks in Singapore to fraudulently obtain invoice financing loans for non-existent goods purportedly sold by a British Virgin Islands ("**BVI**") incorporated company, Pinnacle Offshore Trading Inc ("**Pinnacle Offshore**"), to T Specialist (the "**Cheating Charges**"). These fictitious commercial invoices were purportedly issued by Pinnacle Offshore to T Specialist.

10. Pinnacle Offshore is owned by one Wang Zhiguo ("**Wang**"), NKW's friend and long time business associate. Under this invoice financing fraud scheme, Wang had provided blank softcopy templates of Pinnacle Offshore's commercial invoices bearing his own digital signature to NKW and Sherly. Following NKW's instructions, Sherly filled in the templates and submitted the completed invoices, on 81 occasions, to five banks in Singapore (namely: DBS Bank Ltd, CIMB Bank Berhad, Malayan Banking Berhad, RHB Bank Berhad, and Oversea-Chinese Banking Corporation Limited) in support of the invoice financing loan applications.

11. There were in fact no underlying goods transaction between Pinnacle Offshore and T Specialist and the invoices were accordingly false.

12. The bulk of the non-existent goods purportedly sold by Pinnacle Offshore to T Specialist are Watari-brand instant noodles. Aside from the false invoices, NKW also provided the banks with a contract between T Specialist and Pinnacle Offshore, explaining, *inter alia*, that there was an arrangement where the latter would help to collect moneys from T Specialist's debtors and source for Watari instant noodles. NKW either showed this contract or verbally mentioned this contract to the banks with the aim of making it appear that the purchases of Watari instant noodles from Pinnacle Offshore were genuine. To further give the banks the impression that the transactions were genuine, T Specialist, on NKW's instructions, also shipped a few hundred cartons of instant noodles abroad sometime in 2014 so the banks would believe that NKW was indeed transacting in instant noodles as part of his business.

13. The five banks, believing the 81 commercial invoices to be genuine, made payment of the invoice amounts to Pinnacle Offshore. The five banks would not have granted the loans to T Specialist had they known that the invoices were fictitious and there was no genuine trade as shown in the invoices submitted.

14. Wang also instructed his staff based in China to follow the instructions provided by NKW or Sherly in relation to the moneys received from the aforementioned five banks into Pinnacle Offshore's bank accounts in Hong Kong or China. These moneys were eventually transferred by Wang's staff back to the bank accounts of T Specialist, or NKW's other companies. NKW then used these moneys to repay outstanding bank facilities and for T Specialist's business expenses.

15. To avoid detection from the banks, in some cases, NKW also suggested to Wang to make use of Wang's BVI incorporated company belonging to Wang's wife – MarsRock Offshore Trading ("**Mars-Rock**") – to further layer the round-tripping of moneys from Pinnacle Offshore to T Specialist's bank accounts, or to the bank accounts of NKW's other companies. Wang is the ultimate

decision maker in relation to the operations and bank accounts of Mars-Rock. Hence, in some of the 81 cases, the moneys disbursed by the banks to Pinnacle Offshore was first transferred to Mars-Rock's bank account in China before it was transferred to T Specialist's bank accounts, or the bank accounts of NKW's other companies.

16. To further avoid detection from the banks, NKW instructed Sherly to create various trade documents (i.e. commercial invoices and delivery orders) from T Specialist and his other companies to Pinnacle Offshore and Mars-Rock, to give the impression that there were genuine transactions leading to the repayments from Pinnacle Offshore and Mars-Rock to T Specialist or his other companies.

The Charges against NKW

The UN-DPRK Reg Charges

17. On these 10 occasions, on the specified dates, T Specialist, under NKW's instructions, supplied goods under the following designated class(es) of luxury items with stated value to the Korean Bugsae Shop owned by Li Ik in the DPRK:

Charge No.	**DAC No.**	**Date of Invoice**	**Class(es) of designated luxury items supplied**	**Invoice Value of prohibited Luxury Goods / SGD**
17	923213-2018	12 December 2011	Wines and spirits	295,819.30
25	923221-2018	2 April 2012	Wines and spirits	206,222.43
42	923238-2018	25 October 2012	Wines and spirits	174,144.00
54	923250-2018	21 March 2013	Wines and spirits	273,232.99
55	923251-2018	22 March 2013	Perfumes, cosmetics, musical instruments and precious jewellery	381,002.38
57	923253-2018	31 July 2013	Perfumes, cosmetics and precious jewellery	236,145.87
60	923256-2018	28 August 2013	Perfumes, cosmetics and precious jewellery	286,665.50
65	923261-2018	25 November 2013	Watches of metal clad with a precious metal	225,725.22
66	923262-2018	10 February 2014	Wines and spirits	175,950.89
75	923271-2018	3 March 2015	Precious jewellery	318,950.23

18. Accordingly, on these 10 occasions, NKW had abetted by engaging in a conspiracy with T Specialist, Sherly, and Li Ik, to supply designated luxury items to a person in the DPRK, which act was committed in consequence of his abetment, and he has thereby committed 10 offences under Regulation 5(a) read with Regulation 16(1) of the UN-DPRK Reg, punishable under Section 5(1) of the United Nations Act (Cap. 339, 2002 Rev. Ed.) ("**UN Act**"), read with Section 109 of the Penal Code (Cap. 224, 2008 Rev. Ed.) ("**PC**").

19. The total value of designated luxury goods supplied to the DPRK across all these 10 proceeded UN-DPRK Reg charges is SGD 2,573,858.81. The total value of designated luxury goods supplied to the DPRK across all the UN-DPRK Reg charges (including the 69 which have been taken into consideration for sentencing) amounts to USD 49,781.30 and SGD 6,018,546.89.

The Cheating Charges

20. On 10 occasions, T Specialist, under NKW's instructions, submitted to a bank a document in support of its application for a trade financing loan, i.e. a commercial invoice purportedly issued by Pinnacle Offshore to T Specialist for the sale of particular items at a particular invoice amount, knowing the said invoice to be false as there was no underlying goods transaction between Pinnacle Offshore and T Specialist for the said items at that particular invoice amount. By such manner of deception, on each of these occasions, T Specialist dishonestly induced the bank to make payment of the invoice amount to Pinnacle Offshore.

21. The details of the 10 occasions are as follows:

Charge No.	**DAC No.**	**Date of Application of Invoice Financing**	**Bank Cheated**	**Invoice amount and Amount Disbursed by Bank to Pinnacle Offshore / USD**	**Purported sale of Item**	**Invoice Number**
86	923282-2018	14 March 2014	DBS Bank Ltd	2,160,000.00	Watari MSG 99% Purity	20140313-1
89	923285-2018	2 June 2014	DBS Bank Ltd	2,088,000.00	Watari MSG 99% Purity	20140602-1
90	923286-2018	3 July 2014	DBS Bank Ltd	2,514,600.00	Watari Instant Noodle & Watari MSG 99%	201407/02-3
93	923289-2018	9 September 2014	DBS Bank Ltd	2,509,500.00	Watari Instant Noodle	20140909-1
98	923294-2018	19 December 2014	DBS Bank Ltd	1,911,930.00	I-Beam range 600 meter	20141219-1
100	923296-2018	21 January 2015	DBS Bank Ltd	2,007,600.00	Watari Instant Noodle	20150121-1
101	923297-2018	9 February 2015	Malayan Banking Berhad	2,160,000.00	Watari Instant Noodle	20150209-1

102	923298-2018	2 March 2015	Malayan Banking Berhad	2,810,640.00	Watari Instant Noodle	20150302-1
104	923300-2018	30 April 2015	DBS Bank Ltd	2,232,000.00	Watari MSG 99% Purity	20150429-1
107	923303-2018	20 May 2015	DBS Bank Ltd	2,664,000.00	Watari MSG 99% Purity	20150520-1

22. Accordingly, on these 10 occasions, NKW had abetted by engaging in a conspiracy with T Specialist and Wang to cheat various banks into disbursing the invoice amounts to Pinnacle Offshore, which act was committed in consequence of his abetment, and he has thereby committed 10 offences under Section 420 read with Section 109 of the PC.

23. The value of trade financing loans disbursed by the five banks to Pinnacle Offshore, across these 10 proceeded Cheating charges, is USD 23,058,270. The total value of trade financing loans disbursed by the five banks to Pinnacle Offshore, across all the Cheating charges (including the charges which have been taken into consideration for sentencing), is USD 94,218,908 and SGD 1,711,800. There was ultimately no loss occasioned to the banks as NKW repaid all the banks in full for the fictitious invoice financing loans.

The Charges against T Specialist

The UN-DPRK Reg Charges

24. On these 10 occasions, on the specified dates, T Specialist, under NKW's instructions, supplied goods falling the following designated class(es) of luxury items with stated value to the Korean Bugsae Shop owned by Li Ik in the DPRK:

Charge No.	**DSC No.**	**Date of Invoice**	**Class(es) of designated luxury items supplied**	**Invoice Value of prohibited Luxury Goods / SGD**
17	900318-2018	12 December 2011	Wines and spirits	295,819.30
25	900326-2018	2 April 2012	Wines and spirits	206,222.43
42	900343-2018	25 October 2012	Wines and spirits	174,144.00
54	900355-2018	21 March 2013	Wines and spirits	273,232.99
55	900356-2018	22 March 2013	Perfumes, cosmetics, musical instruments and precious jewellery	381,002.38
57	900358-2018	31 July 2013	Perfumes, cosmetics and precious jewellery	236,145.87
60	900361-2018	28 August 2013	Perfumes, cosmetics and precious jewellery	286,665.50

65	900366-2018	25 November 2013	Watches of metal clad with a precious metal	225,725.22
66	900367-2018	10 February 2014	Wines and spirits	175,950.89
75	900376-2018	3 March 2015	Precious jewellery	318,950.23

25. Accordingly, on these 10 occasions, T Specialist had supplied designated luxury items to a person in the DPRK, and it has thereby committed 10 offences under Regulation 5(a) read with Regulation 16(1) of the UN-DPRK Reg, punishable under Section 5(1) of the UN Act.

26. The total value of designated luxury goods supplied to the DPRK across all these 10 proceeded UN-DPRK Reg charges is SGD 2,573,858.81. The total value of designated luxury goods supplied to the DPRK across all the UN-DPRK Reg charges (including the 69 which have been taken into consideration for sentencing) amounts to USD 49,781.30 and SGD 6,018,546.89.

Facts relating to the 81st Charge (DSC-900382-2018)

27. On or around 16 May 2016, T Specialist, on NKW's instructions, submitted a fictitious commercial invoice to RHB Bank Berhad in support of its application for a trade financing loan, giving the bank the impression that the said invoice was issued by Pinnacle Offshore to T Specialist for the sale of Watari Instant Noodle amounting to USD 780,000. There was in fact no such underlying goods transaction between Pinnacle Offfshore and T Specialist for the said Watari Instant Noodle sale amounting to USD 780,000.

28. Believing the invoice to be genuine, RHB Bank Berhad disbursed USD 780,000 to Pinnacle Offshore's bank account. Wang's staff, on NKW's instructions, then transferred this sum to Mars-Rock's bank account in China, of which USD 765,000 was then transferred to T Specialist's Oversea-Chinese Banking Corporation Limited ("**OCBC**") (bank a/c no. XXX) on 19 May 2016.

29. Accordingly, on 19 May 2016, T Specialist did acquire a sum of USD 765,000 in its OCBC bank account number XXX, which in whole directly represents its benefits of criminal conduct for cheating RHB Bank Berhad on 16 May 2016 and dishonestly inducing a delivery of a sum of USD 780,000 under Section 420 of the PC.

30. An offence under Section 420 PC is listed as a serious offence under the Second Schedule to the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A) ("**CDSA**"). Accordingly, T Specialist has committed an offence under Section 47(1)(c) and punishable under Section 47(6) CDSA.

Facts relating to the 83rd Charge (DSC-900384-2018)

31. On or around 6 June 2016, T Specialist, on NKW's instructions, submitted a fictitious commercial invoice to CIMB Bank Berhad in support of its application for a trade financing loan, giving the bank the impression that the said invoice was issued by Pinnacle Offshore to T Specialist for the sale of Watari Instant Noodle amounting to USD 780,000. There was in fact no such underlying goods transaction between Pinnacle Offfshore and T Specialist for the said Watari Instant Noodle sale amounting to USD 780,000.

32. Believing the invoice to be genuine, CIMB Bank Berhad disbursed USD 780,000 to Pinnacle Offshore's bank account. Wang's staff, on NKW's instructions, then transferred this sum to Mars-Rock's bank account in China, of which USD 765,000 was then transferred to T Specialist's DBS Bank Ltd ("**DBS**") (bank a/c no. XXX) on 8 June 2016.

33. Accordingly, on 8 June 2016, T Specialist did acquire a sum of USD 765,000 in its DBS bank account number XXX, which in whole directly represents its benefits of criminal conduct for cheating CIMB Bank Berhad on 6 June 2016 and dishonestly inducing a delivery of a sum of USD 780,000 under Section 420 of the PC.

34. An offence under Section 420 PC is listed as a serious offence under the Second Schedule to CDSA. Accordingly, T Specialist has committed an offence under Section 47(1)(c) and punishable under Section 47(6) CDSA.

35. The accused persons have admitted to the offences[note: 87] and are charged accordingly.

ALAN LOH and THIAM JIA MIN

DEPUTY PUBLIC PROSECUTORS

SINGAPORE

22 November 2019

ANNEX 2

DAC-908796-2019 and Ors

THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

PUBLIC PROSECUTOR
V WANG ZHIGUO

STATEMENT OF FACTS
(Incorporating 10 Charges)

The Accused

1. The accused is Wang Zhiguo ("**Wang**"), a 56-year-old male Chinese national and Singapore Permanent Resident bearing NRIC No. XXX.

2. At the material time, the accused was the sole director and decision maker of British Virgin Islands ("**BVI**") incorporated company Pinnacle Offshore Trading Inc ("**Pinnacle Offshore**"). At the material time, he was also the controlling mind and decision maker of another BVI incorporated company, Mars-Rock Offshore Trading ("**Mars-Rock**"), even though the accused's wife was listed as the sole director.

Other Persons of Interest

3. The accomplices are:

a. Ng Kheng Wah ("**NKW**"), a 56-year-old male Singaporean, bearing NRIC No. XXX. NKW and the accused are long-time friends and close business associates.

b. T Specialist International (S) Pte Ltd ("**T Specialist**"), a company incorporated in Singapore on 27 August 1997 and in the business of general wholesale trade. At the material time, NKW was one of the directors of T Specialist. T Specialist was also wholly owned by TTAT Investment Pte Ltd, of which NKW was the majority shareholder.

c. Sherly Muliawan ("**Sherly**"), an Indonesian national and Singapore Permanent Resident. She is the Shipping Manager and purchaser of T Specialist.

First Information Report

5. On 14 August 2017, the Commercial Affairs Department of the Singapore Police Force filed a police report stating that it had received information that NKW and business entities related to him may be involved in money laundering activities.

Background

6. Investigations revealed that towards the end of 2013, T Specialist was owed some USD 20 million owing to delayed payment by T Specialist's customer for goods ordered from T Specialist. In order to overcome this cash flow problem and generate liquidity for T Specialist, NKW devised a fraudulent invoice financing scheme. From January 2014 to August 2016, T Specialist, on NKW's instructions, submitted fictitious commercial invoices on 81 occasions to five banks in Singapore to fraudulently obtain invoice financing loans for non-existent goods purportedly sold by Pinnacle Offshore to T Specialist. These fictitious commercial invoices were purportedly issued by Pinnacle Offshore to T Specialist.

7. Under this invoice financing fraud scheme, Wang had provided blank softcopy templates of Pinnacle Offshore's commercial invoices bearing his own digital signature to NKW and Sherly. Wang knew that the invoice template he provided would be filled in and used to deceive third party banks into believing that Pinnacle Offshore had sold goods to T Specialist, when in fact, there were no such sales.

8. Following NKW's instructions, Sherly filled in the templates and submitted the completed invoices, on 81 occasions, to five banks in Singapore (namely: DBS Bank Ltd, CIMB Bank Berhad, Malayan Banking Berhad, RHB Bank Berhad, and Oversea-Chinese Banking Corporation Limited) in support of the invoice financing loan applications.

9. There were in fact no underlying goods transaction between Pinnacle Offshore and T Specialist and the invoices were accordingly false.

10. The bulk of the non-existent goods purportedly sold by Pinnacle Offshore to T Specialist are Watari-brand instant noodles. Aside from the false invoices, NKW also provided the banks with a contract between T Specialist and Pinnacle Offshore, explaining, *inter alia*, that there was an arrangement where the latter would help to collect moneys from T Specialist's debtors and also to source for Watari instant noodles. NKW either showed this contract or verbally mentioned this contract to the banks with the aim of making it appear that the purchases of Watari instant noodles from Pinnacle Offshore were genuine.

11. The five banks, believing the 81 commercial invoices to be genuine, made payment of the invoice amounts to Pinnacle Offshore. The five banks would not have granted the loans to T Specialist had they known that the invoices were fictitious and there was no genuine trade as shown in the invoices submitted.

12. Wang also instructed his staff based in China to follow the instructions provided by NKW or Sherly in relation to the moneys received from the aforementioned five banks into Pinnacle Offshore's bank accounts in Hong Kong or China. These moneys were eventually transferred by Wang's staff back to the bank accounts of T Specialist, or NKW's other companies. NKW then used these moneys to repay outstanding bank facilities and for T Specialist's business expenses.

13. To avoid detection from the banks, in some cases, Wang also made use of Mars-Rock to further layer the round-tripping of moneys from Pinnacle Offshore to T Specialist's bank accounts, or to the bank accounts of NKW's other companies. Hence, in some of the 81 cases, the moneys disbursed by the banks to Pinnacle Offshore was first transferred to Mars-Rock's bank account in China before it was transferred to T Specialist's bank accounts, or the bank accounts of NKW's other companies.

Facts relating to the 10 Proceeded Charges

13. On 10 occasions, T Specialist, under NKW's instructions, submitted to a bank a document in support of its application for a trade financing loan, i.e. a commercial invoice purportedly issued by Pinnacle Offshore to T Specialist for the sale of particular items at a particular invoice amount, knowing the said invoice to be false as there was no underlying goods transaction between Pinnacle Offshore and T Specialist for the said items at that particular invoice amount. By such manner of deception, on each of these occasions, T Specialist dishonestly induced the bank to make payment of the invoice amount to Pinnacle Offshore.

14. The details of the 10 occasions are as follows:

Charge No.	**DAC No.**	**Date of Application of Invoice Financing**	**Bank Cheated**	**Invoice amount and Amount Disbursed by Bank to Pinnacle Offshore / USD**	**Purported sale of Item**	**Invoice Number**
6	908801-2019	14 March 2014	DBS Bank Ltd	2,160,000.00	Watari MSG 99% Purity	20140313-1
9	908804-2019	2 June 2014	DBS Bank Ltd	2,088,000.00	Watari MSG 99% Purity	20140602-1
10	908805-2019	3 July 2014	DBS Bank Ltd	2,514,600.00	Watari Instant Noodle & Watari MSG 99%	201407/02-3
13	908808-2019	9 September 2014	DBS Bank Ltd	2,509,500.00	Watari Instant Noodle	20140909-1
18	908813-2019	19 December 2014	DBS Bank Ltd	1,911,930.00	I-Beam range 600 meter	20141219-1
20	908815-2019	21 January 2015	DBS Bank Ltd	2,007,600.00	Watari Instant Noodle	20150121-1
21	908816-2019	9 February 2015	Malayan Banking Berhad	2,160,000.00	Watari Instant Noodle	20150209-1
22	908817-2019	2 March 2015	Malayan Banking Berhad	2,810,640.00	Watari Instant Noodle	20150302-1
24	908819-2019	30 April 2015	DBS Bank Ltd	2,232,000.00	Watari MSG 99% Purity	20150429-1

27	908822-2019	20 May 2015	DBS Bank Ltd	2,664,000.00	Watari MSG 99% Purity	20150520-1

15. Accordingly, on these 10 occasions, Wang had abetted by engaging in a conspiracy with T Specialist and NKW to cheat various banks into disbursing the invoice amounts to Pinnacle Offshore, which act was committed in consequence of his abetment, and he has thereby committed 10 offences under Section 420 read with Section 109 of the PC.

16. The value of trade financing loans disbursed by the five banks to Pinnacle Offshore, across the 10 proceeded charges, amounts to USD 23,058,270. The total value of trade financing loans disbursed by the five banks to Pinnacle Offshore, across all the charges (including the charges which have been taken into consideration for sentencing), amounts to USD 94,218,908 and SGD 1,711,800.

17. There was ultimately no loss occasioned to the banks as NKW repaid all the banks in full for the fictitious invoice financing loans.

18. The accused has admitted to the offences and is charged accordingly.

ALAN LOH and THIAM JIA MIN

DEPUTY PUBLIC PROSECUTORS

SINGAPORE

22 November 2019

[note: 1]Prosecution's Skeletal Submissions at [2] ("PP's submissions")

[note: 2]Joint Statement of Facts ("Joint SOF") of Ng and T Specialist at [15]

[note: 3]"Security Council Committee established pursuant to resolution 1718(2006)"; URL: https://www.un.org/securitycouncil/sanctions/1718 [accessed 22 November 2019]

[note: 4]"Work and Mandate"; URL: https://www.un.org/securitycouncil/sanctions/1718/panel_experts/work_mandate [accessed 22 November 2019]

[note: 5]MFA's impact statement at TAB C of the Prosecution's Bundle of Authorities ("BOA"), p3. ("MFA impact statement")

[note: 6]Singapore Parliamentary Debates, Official Report (15 October 2001) Vol 73 – Speech by The Minister for Law and the Minister for Foreign Affairs, Prof. S Jayakumar at Column 2446.

[note: 7]United Nations (Sanctions-Democratic People's Republic of Korea) Regulations 2010, Regulation 2.

[note: 8]Seventh Schedule to the Regulation of Import and Export Regulations – "Prohibited Imports from and Exports to (including transhipped goods and goods in transit originating from or bound for) country or territory" – DPRK; item 5

[note: 9]United Nations (Sanctions-Democratic People's Republic of Korea) Regulations 2010, Regulation 1.

[note: 10]Mitigation Plea and Submissions on Sentence of Ng and T Specialist at [13] – [17] ("Mitigation plea of Ng and T Specialist")

[note: 11]Ibid at [18]

[note: 12]Joint SOF of Ng and T Specialist at [9]

[note: 13]Ibid at [17]

[note: 14]63rd charge was stood down during the proceedings and was subsequently withdrawn by the Prosecution.

[note: 15]Ibid.

[note: 16]PP's Submissions at [13]- [14]

[note: 17]MFA's impact statement

[note: 18]Joint SOF of Ng and T Specialist at [22(b)]

[note: 19]PP's submissions at [43]

[note: 20]PP's submissions at [44]; TAB H of PP's BOA and Correspondence between CAD and 5 victim banks.

[note: 21]The appeal against sentence was dismissed on 9 May 2017.

[note: 22]Mitigation Plea and Submissions of Ng and T Specialist

[note: 23]Implementation Assistance Notice No.3: Guidelines for the implementation of measures regarding "Luxury Goods" under Security Council Resolutions 1718(2006), 1874(2009), 2087(2013), 2094(2013), 2270 (2016) and 2321(2016).

[note: 24]Mitigation Plea and Submissions of Ng and T Specialist at [51]-[53]

[note: 25]*Ye Lin Myint v Public Prosecutor* [2019] SGHC 221 at [42]

[note: 26]*Public Prosecutor v Tan Kok Ming Michael & Ors* [2019] SGHC 207 at [106] – [108]

[note: 27]Mitigation plea and Submissions on Sentence for Wang at [50]

[note: 28]Section 2 of the UN-DPRK Reg.

[note: 29]Singapore Parliamentary Debates, Official Report (15 October 2001) Vol 73 – Speech by Prof S Jayakumar (Minister for Law and Minister for Foreign Affairs) at Column 2436.

[note: 30]PP's Submissions at [16]

[note: 31]United Nations (Anti-Terrorism Measures) Regulations (Cap 229, RG 1)

[note: 32]*Public Prosecutor v Apinyowichian Yongyut and others* [2016] SGDC 200 ("*Yongyut*") cited in *Logachev* at [55]

[note: 33]*NZ Customs Services* at [58]

[note: 34]PAL had entered into a joint-venture with a Chinese aviation company, BGAC, to supply aircraft to China. One of its aircraft was on-sold to Freesky Aviation Company ("Freesky"), which intended to base the aircraft in North Korea, for tourism purposes. PAL was specifically informed of the aircraft's arrival in North Korea in January 2016. Nevertheless, PAL continued to supply warranty parts to Freesky, knowing that the parts would be sent to repair the aircraft based in North Korea: PP's submissions at [12]

[note: 35]PP's submissions at [13(c)(iii)]

[note: 36]See US Federal Sentencing Guidelines Table, Band 26

[note: 37]Ibid, Band 24

[note: 38]See US Federal Sentencing Guidelines Table, Band 26. The actual sentence for the case is unknown.

[note: 39]The MFA impact statement referred to the US Presidential Executive Order ("EO") 13810 of 20 September 2017. The EO imposed additional US unilateral sanctions on the DPRK as the US considers the DPRK's use of funds generated through international trade to support its nuclear and missile programmes, and weapons proliferation as a continuing threat to the US national security and foreign policy.

[note: 40]*Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099 at [41]

[note: 41]See paragraph 51(c) of this judgment

[note: 42][2017] SGCA 37

[note: 43]*Logachev* at [73]-[75]

[note: 44]*Ye Lin Myint* at [63]-[68]

[note: 45]The indicative starting points depends on whether the offender claims trial.

[note: 46]Based on the *Asahi Shimbun* article dated 28 December 2018 [MFA impact statement – Annex B], the designated luxury goods were sold to the Korean Bugsae Shop in the DPRK, which catered to Pyongyang's elites, Chinese businessmen and members of the diplomatic corps.

[note: 47]See paragraph 55 of this judgment.

[note: 48]MFA impact statement – Annex B

[note: 49]PP's submissions at [9(c)]

[note: 50]MFA impact statement – Annex A

[note: 51]Joint SOF of Ng and T Specialist at [7]

[note: 52]In *NZ Customs Services*, the New Zealand courts found that as an indicative starting point, the appropriate sentence was about 35% of the maximum sentence which could be imposed on the offender. The maximum sentence under the equivalent New Zealand legislation was 12 months' imprisonment term, if the offender was an individual. Accordingly, the appropriate starting point would have been about 4 months' imprisonment term.

[note: 53]*Singapore Parliamentary Debates* (22 October 2007), Vol 83 – Speech of the Senior Minister of State for Law Associate Professor Ho Peng Kee at the Second Reading of the Penal Code (Amendment) Bill 2007.

[note: 54]*Keeping Mark John v Public Prosecutor* [2017] 5 SLR 627 at [29]

[note: 55]*Pittis Stavros v Public Prosecutor* [2015] 3 SLR 181 at [62]

[note: 56]*R v Forsythe* (1980) 2 Cr App R (S) 15

[note: 57]*Public Prosecutor v Wang Ziyi Able* [2008] 2 SLR (R) 1082 at [29] ("*Wang Ziyi Able*"). In this case, an additional fine was not imposed as the court found at [32] that the offender did not profit from his actions.

[note: 58]*Koh Jaw Hung v Public Prosecutor* [2019] 3 SLR 516 at [48] ("*Koh Jaw Hung*")

[note: 59]*Low Meng Chay v Public Prosecutor* [1993] 1 SLR (R) 46 at [13]. Where an offender is unable to pay the fine, he or she will have to serve a default sentence in lieu of payment of the fine. The length of the default sentence should not exceed half of the maximum sentence for the offence: *Section 319(d)(i), Criminal Procedure Code*, (Cap 68, 2012 Rev Ed).

[note: 60]Joint SOF of Ng and T Specialist at [19]

[note: 61]Mitigation Plea and Submissions of Ng and T Specialist at [28]. This figure is accurate as of 6 February 2018.

[note: 62]Ibid at [52]

[note: 63]Joint SOF of Ng and T Specialist at [23]

[note: 64]Mitigation Plea and Submissions of Ng and T Specialist at [27]. Based on ICMS records, criminal proceedings against Ng and T Specialist began on 18 July 2018.

[note: 65]*Soong Hee Sin v Public Prosecutor* [2001] 2 SLR 253 at [9], *per* Yong Pung How CJ.

[note: 66]PP's submissions at [44]; Table prepared by CAD in **TAB H** of PP's BOA.

[note: 67]The last charge date – see table prepared by CAD in **TAB H** of PP's BOA.

[note: 68]Mitigation and Submissions of Ng and T Specialist at [52]

[note: 69]*Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR (R) 406 at [3]

[note: 70]Defence Bundle of Authorities for Ng and T Specialist at **Tab 6** – Table of Assets Pledged to the Banks and Credit Facilities Obtained.

[note: 71]*Wang Ziyi Able* at [15]-[16]

[note: 72]The total amount of moneys cheated for the proceeded charges was **$1,016,833.10**. The total amount of moneys cheated across all the cheating charges was **$3,193,737.65**. No restitution was made. The appeal against sentence was dismissed on 10 August 2018.

[note: 73]See paragraph 88 of this judgment.

[note: 74]*Albert Tan* at [78]. The amount of loss to the investors cannot be shown.

[note: 75]*Huang Ying-Chun* at [98]

[note: 76]For the factors in [98(c), (d) & (e)], See J cautioned in *Huang Ying-Chun* at [67] and [88] in the case of a trial, as these factors also constitute the elements of the charge, the court must ensure that the particulars of these factors are made out beyond a reasonable doubt before taking them into account as an aggravating factor in sentencing. This situation does not apply where the offender had admitted to the facts and the matter is uncontested.

[note: 77]*Lim Ying Ying Luciana v Public Prosecutor* [2016] 4 SLR 1220 at [33] ("*Luciana*")

[note: 78]*Huang Ying-Chun* at [57]

[note: 79]Ibid at [75]

[note: 80]PP's submissions at [45] & [48]

[note: 81]Prosecution's Schedule of Offences – the offences were committed between 19 May 2016 to 29 June 2019.

[note: 82]Mitigation Plea and Submissions of Ng and T Specialist at [56]-[57]

[note: 83]*Luciana* at [43], [44], [49], [52] and [54]

[note: 84]Ibid at [61]

[note: 85]Ibid at [62]

[note: 86]Each occasion can be traced to an invoice issued by T Specialist. Five of these 79 invoices are dated in or after January 2016, which is the time Li Hyon assisted Li Ik in the business of buying designated luxury items from T Specialist.

[note: 87]T Specialist has admitted to its offences through its representative, Chew Ng Sew.

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