

New Sentencing Framework for nominee directors who fail to oversee the affairs of their companies – Public Prosecutor v Zheng Jia¹

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1. The criminalising of negligence by company directors has been a controversial part of Singapore company law since it was first introduced to the Companies Act (the "Act") in 1966.² This is compounded by the fact that a breach brings with it the threat of imprisonment. Since 2017, the position in Singapore has been, based on the authority of *Abdul Ghani bin Tahir v Public Prosecutor* ("*Abdul Gani*"),³ that the starting point for purely negligent breaches was a fine, with a custodial sentence only appropriate where the breach by the director was intentional or reckless⁴. Part of the rationale for this was the desire not to hamper commerce⁵.
2. This approach was re-examined by a 3 judge coram of the Singapore High Court chaired by the Chief Justice in *Public Prosecutor v Zheng Jia* ("*Zheng Jia*"), in a decision of great consequence for those in the corporate secretarial business in Singapore, particularly those that provide nominee director services. They now face a real likelihood of imprisonment for breaches of section 157(1) of the Act.

Facts

3. Zheng Jia was a chartered accountant who offered accounting and corporate secretarial services. In November 2019, he established a branch office in Shenzhen, the People's Republic of China ("PRC"), with a view to attracting Chinese clients who were interested in incorporating companies in Singapore. Zheng Jia initially registered himself as the Singapore resident director and company secretary of those companies. These services were priced between \$1,000 to \$1,400 annually. Zheng Jia had been registered as a director of 384 companies in this way.
4. Zheng Jia's efforts at expanding his client base were so successful that he needed to recruit a second person, Er, sometime between April to June 2020 under a "nominee services" arrangement, which involved Er acting as the locally resident director for companies incorporated by Zheng Jia. Er had been appointed as a director of 186 companies.
5. The 1st charge that Zheng Jia faced was in respect of the company Ocean Wave. Sometime in May 2020 Zheng Jia incorporated a company Ocean Wave for a client, Zhong, and acted as the Singapore resident director. He assisted Ocean Wave to open a bank account in Singapore. In October 2020 an American company fell victim to a scam and was deceived into transferring US\$64,630 to Ocean Wave's bank account. The moneys were then channelled to a bank account in the PRC.
6. Zheng Jia never met Zhong and did not know what Zhong's role in Ocean Wave was. He also did not know anything about Ocean Wave's business activity, its suppliers or clients, or if Ocean Wave had any business activity in Singapore. He did not take any steps to find out anything about Ocean Wave, including checking the transactions made through its bank accounts, reviewing the bank statements, or enquiring about what the bank account was to be used for.
7. Zheng Jia's 2nd charge was in relation to a company Rui Qi. Zheng Jia arranged for Er to be registered as director for Rui Qi. He did not inform Er about the results of the background checks on the client. He and Er never met the client and did not know what the client's role in Rui Qi was. He, and consequently Er, also did not know anything about Rui Qi's business activity, its suppliers or clients, or if Rui Qi had any business activity in Singapore. Neither Zheng Jia nor Er did take any steps to find out anything about Rui Qi, including checking whether there were transactions made through its bank accounts, reviewing the bank statements, or enquiring about what the bank accounts were to be used for. Zheng Jia did not provide Er with any further information in relation to Rui Qi following its

¹ [2025] SGHC 76

² Now found in s157(1) of the Companies Act; "A director must at all times act honestly and use reasonable diligence in the discharge of the duties of his or her office."

³ [2017] 4 SLR 1153

⁴ *Ibid* at [166]

⁵ *Ibid* at [158]-[161]

incorporation, including the bank statements or tell him about the information therein. As a result, Er had failed to exercise any supervision over the affairs of Rui Qi. Zheng Jia was charged with abetting Er's omission to exercise reasonable diligence over Rui Qi.

Decision of the High Court

8. At first instance, Zheng Jia was sentenced by a District Court to a total fine of \$8,500: a \$3,500 fine for the 1st charge, and a \$5,000 fine for the 2nd charge. Dissatisfied with the lower court's decision not to impose an imprisonment term, the Prosecution appealed to the High Court and expressly invited the Court to depart from the sentencing approach in *Abdul Gani*. The Prosecution's appeal was allowed and the High Court sentenced Zheng Jia to a total imprisonment term of 10 months: 3 months for the 1st charge and 7 months for the 2nd charge.
9. As a starting point, the Court observed that the duty to exercise reasonable diligence under the Companies Act is a broad one that is capable of being breached in many ways. A director who commits an isolated negligent breach of his duties as a director should not be punished in the same way as a professional whose business model was predicated on providing a locally resident nominee director for numerous companies incorporated for foreign clients, but who would then exercise no control or supervision over the affairs of those companies whatsoever. In the latter case, the issue of hampering commerce does not arise.
10. As such, the Court disagreed with the position in *Abdul Ghani* that the preservation of Singapore's commercial environment should militate against the imposition of custodial sentences, save where the offending director had acted "intentionally, knowingly or recklessly". In the Court's view, this overlooked the differences between one who offers a particular form of directorship that entails looking away from the affairs of the company, and one who is committed to the best interests of the company but makes a mistake while carrying out his duties.
11. Directors who assume their offices with every intention of abdicating their duty under s 157(1) present serious risks to their companies specifically and Singapore's corporate and financial ecosystem generally and they are acting knowingly, if not intentionally. The Court therefore ruled that *Abdul Ghani* should no longer be relied on as a sentencing precedent for offences under s 157(1).
12. Instead, the Court laid down a new, 3 step framework (the "Revised Framework") for sentencing for offences under section 157(1). The first step is to identify *all* the relevant offence-specific factors (and this would include the nature and extent of the harm caused). To aid in this the Court set out a non-exhaustive list of factors that may be considered in the first step:
 - a. the extent of due diligence undertaken by the director in relation to the activities of the company and/or the client;
 - b. efforts made by the director to monitor or review transactions in the company's bank account(s);
 - c. the extent to which the director knew - or should have known - that failing to exercise reasonable diligence in overseeing the affairs of the company could (or even would) enable abuse of the corporate structure by others;
 - d. the duration of offending (and in particular, whether the offending conduct was a one-off breach or part of a wider pattern);
 - e. whether the offending conduct was pursued as part of a business or other profit-driven scheme (and if so, the extent of the profits derived from or attributable to the offending conduct);
 - f. whether the director made any efforts at concealing his wrongdoing;
 - g. whether there was a transnational element to the offence (such as the involvement of cross-border criminal syndicates); and
 - h. the nature and extent of the harm that resulted to the company and/or third parties.
13. The next step is to place the offence within the appropriate band as follows:

	No. of Offence-Specific Factors	Indicative Starting Sentence
Band 1	1-3	Up to 4 months prison
Band 2	4-5	5 to 8 months prison
Band 3	>6	9 to 12 months prison

14. The second step should not be approached purely as an exercise in counting the number of offence-specific factors present in the case. The table above should only be treated as setting out *guidelines*, the court must in every case consider the gravity of the salient factors to determine if the offence would be more properly situated in a higher or lower band (as well as where the offence falls *within* the applicable band).

15. The third and final step would be to adjust that indicative sentence based on offender-specific factors relevant to the case⁶, e.g.
- other offences taken in consideration for the purposes of sentencing;
 - the offender's relevant antecedents;
 - remorse (or the lack thereof) on the offender's part;
 - whether the offender entered into a timeous plea of guilt;
 - the extent of voluntary restitution made by the offender; and
 - whether the offender voluntarily cooperated with the authorities in the course of investigations into the offence.
16. The Revised Framework is equally applicable to the sentencing of accessories to a breach of s 157(1). The key difference lies in the type of offence-specific factors that may be accounted for at the first step. For instance, efforts taken by an abettor to understand and monitor the activities of the company may not be as relevant to the inquiry. Instead, the focus will shift to factors such as the abettor's reasons for having aided or instigated the director's breach of duty; any disparity in knowledge or expertise between the abettor and the director (particularly in relation to the duties of the latter's office); and whether the abettor's acts were motivated by profit.
17. Applying the Revised Framework to this case, the Court determined that the 1st charge was in Band 2 with an indicative sentence of 5 months imprisonment, and the 2nd charge was in Band 3 giving an indicative sentence of 10 months imprisonment. After considering the offender specific factors, in particular his plea of guilt, the Court sentenced Zheng Jia to 3 months imprisonment on the 1st charge and 7 months imprisonment on the 2nd charge, to run consecutively.

Conclusion

19. The importance of this decision goes beyond the setting of the Revised Framework for sentencing. It also gives an indication of the factors that will be looked at in determining whether a nominee director is exercising reasonable diligence, such as conducting background checks on the client, meeting the client, establishing the role of the client in the company, determining what business activity the company was to be engaged in, checking the bank statements and establishing what the bank account was to be used for.
20. It also demonstrates a company secretarial provider does not escape criminal liability by putting forward a straw man to be the nominee director. The company secretarial provider can still be liable as an abettor if the nominee director fails in his duties.

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⁶ Offender specific factors are generally uniform across all offences and were dealt with in detail in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 at [63]- [70]

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