

Legal Update

Director's Duties and the Scope of Corporate Accountability

26 August 2025

Recent developments in Singapore's legal landscape have cast a spotlight on the responsibilities of directors and employees. High-profile cases have prompted renewed scrutiny of directors' duties and corporate liability. These legal proceedings not only clarify the legal boundaries of a director's role but also reinforce the importance of safeguarding the company's interests. They serve as a reminder that directors play a critical role in fostering a culture of accountability and compliance.

On 5 June 2025, in the case of *Inter-Pacific Petroleum Pte Ltd v Goh Jin Hian* [2025] SGHC(A), the Appellate Division of the High Court (the "**Appellate Court**") ruled in favour of Dr. Goh Jin Hian, former director of the now-insolvent Inter-Pacific Petroleum Pte Ltd ("**IPP**"). IPP, through its liquidators, had sued Dr Goh for breaches of his duties as a director, seeking to hold him personally liable for over US\$146 million in losses arising from sham cargo financing transactions. While the High Court found him liable at first instance, the Appellate Court overturned that decision, holding that a breach of duty must be the proximate cause of loss in order to attract liability.

This legal update aims to provide practical insights drawn from recent Singapore cases that shape our understanding of directors' duties and liabilities. By examining this case, we highlight not only the legal expectations placed on directors but also key takeaways to guide your own conduct and decision-making. Staying informed and acting with transparency, diligence, and accountability are essential to navigating the evolving corporate governance landscape.



Inter-Pacific Petroleum Pte Ltd v Goh Jin Hian [2025] SGHC(A)

Background Facts

IPP entered judicial management on 4 September 2019 and was subsequently placed into compulsory liquidation on 25 March 2021. Dr. Goh served as a director of IPP from 28 June 2011 until his resignation on 12 August 2019.

IPP operated two main lines of businesses: cargo trading and bunker trading. IPP obtained financing from two banks: Societe Generale ("**SocGen**") and Malayan Banking Berhad ("**Maybank**"). The SocGen facility was available for both the cargo and bunker trading businesses whereas the Maybank facility was only available for the cargo trading business.

During this period, three events occurred, which were later characterised by IPP (in the proceedings against Dr Goh) as "red flags": (a) an audit confirmation request to Mercuria Energy Trading Pte Ltd in February 2018, which Dr Goh signed, stating receivables allegedly due to IPP; (b) the suspension of IPP's bunker craft operator licence on 27 June 2019 following a regulatory breach, which Dr Goh sought to manage by engaging with the Maritime Port Authority and IPP's banking partners; and (c) three confirmations of indebtedness sent to Malayan Banking Berhad in July 2019, which Dr Goh also signed. IPP argued that these events ought to have prompted closer scrutiny of the company's financial position.

On 12 August 2019, Dr Goh learnt of IPP's inability to repay its debts. Shortly thereafter, he reported the potential fraud to the Singapore Police Force.

Judicial managers later discovered that IPP had drawn down over US\$156 million from the banks based on sham transactions, which were never repaid. The purported customers denied liability, asserting they had not entered into the trades, leading to the conclusion that the receivables and underlying transactions were fictitious.

At the High Court, IPP claimed that Dr. Goh breached his duty of care as an executive director. IPP argued that a more prudent director or creditor would have halted the drawdowns or advised against further borrowing. Although the High Court held that his breaches were the proximate cause of the losses, the Appellate Court later reversed this decision, concluding that IPP had not proven that Dr. Goh's negligence directly caused the losses.

Analysis

The appeal centred on the following issues for the consideration of the Appellate Court:

- (1) Whether Dr. Goh's apparent ignorance of the cargo trading business and his lack of an appropriate response to three "red flag" events amounted to a breach of his duty of care as an executive director of IPP;
- (2) Whether Dr. Goh breached his duty of care to the creditors ("**Creditor Duty**") by failing to exercise proper discretion in relation to the cargo drawdowns¹; and
- (3) Whether IPP suffered losses from the cargo drawdowns and whether those losses were directly attributable to Dr. Goh's alleged breaches of duty.

Issue (1) – Whether Dr Goh had breached his duty of care as an executive director of IPP

The Appellate Court held that Dr Goh had breached his duty of care as an executive director of IPP as he was unaware of the cargo trading business.

The Appellate Court agreed with IPP that Dr Goh ought to be held to the standard of care of a reasonably diligent executive director as enshrined in Section 157(1) of the Companies Act 1967 ("**Companies Act**"). The Appellate Court found that Dr Goh was unaware of the existence of the cargo trading business, which was the source of the fraud, despite his high level of involvement in the management decisions of IPP.

However, the Appellate Court found that Dr Goh had not breached his duty of care in relation to the red flag events. Departing from the High Court's findings, the Appellate Court found that the three red flag events were not in fact red flags that would have put Dr Goh on a train of inquiry leading to the fraud in the cargo trading business being uncovered and the loss thereby averted.

Issue (2) – Whether Dr Goh had breached the Creditor Duty

In coming to this conclusion, the Appellate Court considered the two-stage test in *Foo Kian Beng v OP3 International Pte Ltd (in liquidation)* [2024] 1 SLR 361 ("**Foo Kian Beng**")² of whether the Creditor Duty had arisen and whether it had been breached.

The Appellate Court held that Dr Goh could not have breached his Creditor Duty if he did not exercise any discretion in relation to the cargo drawdowns. As per the test in *Foo Kian Beng*, the Creditor Duty is only engaged if the director has authorized the relevant transaction. The Court emphasised that the duty is concerned with the director's subjective state of mind when authorising a transaction, and cannot apply where the director neither knew of nor authorised the transaction. It therefore disagreed with the High Court's view that knowledge of the cargo drawdowns on the part of Dr Goh was not a pre-requisite for the Creditor Duty to be engaged.

¹ These refer to the drawdowns made by IPP on its banking facilities (with SocGen and Maybank) to finance purported cargo trading transactions. These drawdowns were later discovered to be predicated on sham transactions, as there were no genuine underlying trades generating receivables to repay the loans.

² In *Foo Kian Beng*, the Court of Appeal held a director liable for breaching the "Creditor Duty" by authorising payments to himself when the company was already burdened by significant contingent liabilities, declining revenue, and effectively on the brink of insolvency. The Court of Appeal clarified that the Creditor Duty is part of a director's fiduciary duty to act in the best interests of the company, arises only when the company is insolvent, imminently likely to become insolvent, or inevitably headed for insolvency proceedings, and turns on the director's subjective state of mind assessed against the company's financial position at the time.

For completeness, the Court also observed that IPP's financial position by mid-2019 fell within "Category three" of the Foo Kian Beng framework (i.e., insolvency was inevitable) although Dr Goh himself was not aware of this at the material time.

Issue (3) – Whether IPP had suffered loss and whether this loss was caused by Dr Goh's breach of duty

The Appellate Court agreed with the High Court's finding that IPP had suffered loss by virtue of the cargo drawdowns as the drawdowns were predicated on sham transactions. With each successive drawdown, IPP did not reap the benefit of a legitimate transaction which would have reintroduced funds into the company.

However, the Appellate Court held that IPP failed to sufficiently prove that the loss in question would have been avoided if Dr Goh had discharged his duty of care. The Appellate Court applied the common law rules on causation, i.e., the "but for" test, remoteness of damages and foreseeability as set out in the case of *Prima Bulkship Pte Ltd (in creditors' voluntary liquidation) and another v Lim Say Wan and another* [2017] 3 SLR 839 ("**Prima Bulkship**"). Ultimately, the Appellate Court found that IPP had failed to prove causation as their argument that Dr Goh would have inevitably uncovered fraud had he known about the cargo trading business was an unsubstantiated bare assertion. There was no evidence of what steps Dr Goh would realistically have taken, or how those steps would have exposed the fraud (which was orchestrated and concealed by other directors and staff).

The Appellate Court further observed that a director is not expected to be a "forensics investigator or a sleuth" unless there are clear warning signs that would put him on inquiry. Moreover, even if Dr Goh had been aware of the cargo trading business, his oversight would reasonably have mirrored his approach to the bunker business — starting from an assumption that it was conducted legitimately.



What this means for you

The decision of the Appellate Court in *Inter-Pacific Petroleum Pte Ltd v Goh Jin Hian* [2025] SGHC(A) carries important implications for directors and corporate governance in Singapore.

Duty of Awareness and Engagement

The Appellate Court's decision reinforces the principle that directors must maintain a reasonable level of awareness and engagement with all aspects of the company's operations, especially those involving financial transactions.

The court's finding that Dr Goh breached his duty of care by being unaware of a major business line, despite his active involvement in management underlines that directors cannot plead ignorance of major business lines. This reinforces the need for active oversight and engagement across all operational areas, it is a strong reminder that directors cannot remain passive or uninformed about critical areas of the business. Critically directors must document their involvement and understanding. Minutes of directors' meetings cannot be template based and must set out in detail the discussions and queries raised by the directors.

At the same time, the Court emphasised that directors are not expected to be "forensic investigators or sleuths" absent clear warning signs. Their duty is one of vigilance and inquiry when red flags arise, not to proactively hunt for fraud in the absence of such signals.

Proximate Cause Requirement for Liability

At the same time, the court's reversal of the High Court's causation finding underscores the importance of establishing a clear and direct link between a director's breach and the company's loss. This ruling signals that liability will not be imposed solely on the basis of negligence or

oversight; rather, it must be shown that the breach was the proximate cause of the harm suffered. This sets a high bar for establishing liability. Importantly, the Court stressed that companies bear the burden of proving a concrete counterfactual — that is, the specific steps a director would have taken had they discharged their duty, and how those steps would have prevented the loss. Bare assertions of “inevitable discovery” are insufficient.

Clarification on the Creditor Duty

The Court reaffirmed that the Creditor Duty only arises where a director has authorised a transaction, with the inquiry turning on the director’s subjective state of mind at the time; it cannot be imposed on a director who neither knew of nor exercised discretion over the transaction, even if the company was on the brink of insolvency.

Corporate Governance Implications

For directors, this case underscores the imperative of proactive governance. Courts will continue to hold directors to rigorous standards of diligence and care, but liability will hinge on whether those breaches demonstrably contributed to the company’s financial harm. The judgment reinforces that directors must not only be informed and engaged, but also ensure that internal controls are robust, decision-making processes are transparent, and stakeholder interactions (especially those involving financial transactions) are properly documented and defensible. This clarity on evidentiary burden serves as a timely reminder that strategic leadership must be matched by a steadfast commitment to accountability.

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