Clarifying Criminal Conspiracy Charges:
***Soh Chee Wen v Public Prosecutor and another appeal* [2025] SGCA 49; [2025] 2 SLR 176**

I. Executive Summary

Soh Chee Wen v Public Prosecutor and another appeal [2025] 2 SLR 176 concerned a criminal conspiracy to manipulate the markets for and prices of three counters that were being traded on the Singapore Exchange. Mr Soh Chee Wen ("Mr Soh") and Ms Quah Su-Ling ("Ms Quah") were convicted in the General Division of the High Court ("HC") on 169 charges under section 120B of the Penal Code (Cap 224, 2008 Rev Ed) ("PC"); Mr Soh was also convicted on 11 other charges. Mr Soh and Ms Quah appealed to the Court of Appeal ("CA") against the convictions on all the section 120B charges; Mr Soh also appealed against some of his other convictions.

Section 120B PC states that whoever is a party to a criminal conspiracy to commit an offence shall be punished in the same manner as if he had abetted such offence. The CA made the following clarifications concerning section 120B PC. *First*, a section 120B PC charge need not specify when or where the conspiracy is entered into, as a section 120B PC offence is committed when the offender is a *party* to the conspiracy, and is not based on the specific act of entering the conspiracy. *Second*, a section 120B PC charge need not specify the precise acts the accused persons conspired to commit, as a section 120B offence is established when an agreement between the offenders to carry out the relevant offence is proven; there is no need for steps to have been taken to carry out that agreement. *Third*, the Prosecution may, under certain circumstances, bring multiple charges under section 120B PC for an alleged agreement to commit multiple offences.

The CA then rejected Mr Soh's and Ms Quah's arguments that the charges were not made out and upheld the convictions.

II. Material Facts

Mr Soh and Ms Quah were jointly tried and convicted of various offences arising out of an alleged scheme to manipulate the markets for and prices of three counters that were being traded on the Singapore Exchange (the "Scheme"), namely Blumont Group Limited ("Blumont"), Asiasons Capital Ltd ("Asiasons") and LionGold Corp Ltd ("LionGold") (collectively the "BAL shares"). Mr Soh and Ms Quah were alleged to have obtained control of 189 trading accounts (the "Relevant Accounts") held with 20 Financial Institutions ("FIs") in the names of 60 individuals and companies (the "Relevant Accountholders"). They were alleged to have obtained control of, used, and financed the Relevant Accounts by obtaining margin financing from the FIs and offering the BAL shares as collateral. They then allegedly inflated the liquidity and prices of the BAL shares through various techniques including "wash trading" and "aggressive trading".

Mr Soh and Ms Quah were charged with the following offences punishable under section 120B PC read with section 109 of the PC (collectively the "Conspiracy Charges"):

a) 10 charges of being a party to conspiracies to commit offences under section 197(1)(*b*) of the Securities and Futures Act (Cap 289, 2006 Rev Ed) ("SFA"). Six of these charges concerned the markets for BAL shares (the "False Trading Charges"), while the remaining four charges concerned the prices of BAL shares (the "Price Manipulation Charges");
b) 162 charges of being a party to conspiracies to commit offences under section 201(*b*) of the SFA (collectively the "Deception Charges"); and
c) Six charges of being a party to conspiracies to commit the offences of cheating and dishonestly inducing property to be delivered, under section 420 of the PC (collectively the "Cheating

Charges").

In addition, 11 further charges were brought against Mr Soh alone:

a) Three charges of being concerned in the management of the three companies while being an undischarged bankrupt, contrary to section 148(1) of the Companies Act (collectively the "Company Management Charges"); and
b) Five charges of perverting the course of justice contrary to section 204A of the PC, and three charges of attempting to pervert the course of justice contrary to section 204A read with section 511 of the PC (collectively the "Witness Tampering Charges").

Mr Soh and Ms Quah were convicted of all the Conspiracy Charges except nine Deception Charges. Mr Soh was also convicted of the 11 further charges brought against him. They appealed.

III. Issues on Appeal

On appeal, the CA considered the following main issues:

a) Whether the Conspiracy Charges were legally defective, either because they were insufficiently particularised or because they were duplicitous.
b) Whether there should have been a single Conspiracy Charge.
c) Whether the charges that Mr Soh and Ms Quah were convicted on were made out.

A. Whether the Conspiracy Charges were legally defective

Mr Soh and Ms Quah submitted that the Conspiracy Charges were defective because they were (i) insufficiently particularised; and (ii) duplicitous. The CA rejected both arguments.

(i) Whether the charges were sufficiently particularised

Mr Soh and Ms Quah argued that the Conspiracy Charges were deficient because they failed to:

a) specify the circumstances surrounding the entering into of each conspiracy (i.e. when or where the conspiracy was entered into);
b) specify the precise acts which the Mr Soh and Ms Quah conspired to commit; and
c) specify the specific time period of each charge.

On the first objection (*specifying circumstances*), the CA held that there was no need to specify when or where the conspiracy was entered into, as section 120B PC is predicated upon a person being a party to a criminal conspiracy (and not the specific act of entering into that conspiracy). A section 120B PC offence thus continues as long as the offender remains a party to the conspiracy, and the Prosecution is free to charge co-conspirators for a specified period during which they remained parties to the conspiracy.

Further, a criminal conspiracy is generally established as a matter of inference, and direct evidence of criminal conspiracies will rarely be available given that the relevant agreements tend to be made in private. The precise circumstances surrounding the inception of the agreement, such as when and where the agreement was formed, may never be known to persons other than the co-conspirators. It would be unsatisfactory if such parties could not be charged with an offence under section 120B PC, even in the face of overwhelming evidence that the conspiracy subsisted during some later period, simply because it was unclear when or where the conspiracy was initially formed. This is often an inevitable reality, especially in the case of prolonged and complex conspiracies such as the present. The charges therefore were not defective for not stating the date or other surrounding circumstances.

On the second objection (*specifying acts*), it was held that an agreement between the offenders to commit an offence is sufficient to establish a section 120B PC offence. There is no need for steps to be taken to carry out that agreement, and therefore no need to specify the precise trades or transactions which Mr Soh and Ms Quah purportedly conducted in furtherance of each conspiracy. In any event, the Conspiracy Charges did provide the Mr Soh and Ms Quah with sufficient notice about the conspiracies to which they had allegedly been a party.

The CA also rejected Mr Soh and Ms Quah's argument that the particularisation of the underlying offence took on greater importance here. Specifically, they argued that because the Prosecution also sought to have them sentenced under section 109 of the PC on the basis that the conspiracies had in fact been carried to fruition, this meant that completion of the underlying offences materially affected the manner in which they would be punished. As such, they claimed the Prosecution should be required to set out the further particulars of each underlying offence in the Conspiracy Charges, even if such details might not have been necessary to establish criminal liability under section 120B PC.

In rejecting their argument, the CA noted that section 109 of the PC, which concerns punishment of abetment "if the act abetted is committed in consequence of the abetment", considers whether the alleged course of conduct was engaged in for the purpose set out in the relevant charges. The relevant charge here was the sixth Price Manipulation Charge (engaging in a course of conduct to create a false appearance with respect to the price of Asiasons securities). It was thus not necessary to establish each and every transaction said to have been engaged in. The key question, instead, was whether the alleged course of conduct was engaged in for the purpose that was set out in the relevant charges. And to this extent, the provided particulars were sufficient.

Additionally, section 123 of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") only required the Prosecution to provide particulars concerning facts giving rise to criminal liability, and not punishment. It was therefore sufficient for the Conspiracy Charges to assert that the underlying offences were completed.

On the third objection (*specifying time*), the CA reiterated that the Conspiracy Charges allege that the conspiracies subsisted throughout the specified range of dates (over several months). They do not state a range of dates on which Mr Soh and Ms Quah carried out the underlying offences. Therefore, the date ranges could not be said to be overly broad.

(ii) <u>Whether the charges were duplicitous</u>

Mr Soh and Ms Quah submitted that the Conspiracy Charges, by referring to both sections 120B and 109 of the PC, contravened section 132(1) of the CPC, which states that every distinct offence must be charged and tried separately. They argued that this was because abetment by conspiracy and criminal conspiracy are separate and distinct offences comprising distinct elements.

However, the CA held that it was permissible for the Conspiracy Charges to refer to both sections 120B and 109 of the PC. This was because section 109 of the PC is the applicable provision where the individual abets an offence and that abetted offence is committed. Section 120B of the PC then requires that a criminal conspirator be punished "as if" he were an abettor. The applicable punishment for the abetment of an offence, in turn, is set out in various other provisions in the Penal Code and the choice of the applicable provision depends on what the Prosecution is able to establish. While it is true that criminal conspiracy and abetment by conspiracy are distinct offences with distinct elements, it does not follow that they cannot share the same punishment provisions.

In any event, there was no evidence to suggest that Mr Soh and/or Ms Quah were misled or otherwise prejudiced by the manner in which the Conspiracy Charges were framed. Accordingly, the appropriate recourse, if the Conspiracy Charges were found to be defective, would have been to amend the charges rather than to set aside Mr Soh and Ms Quah's convictions.

B. Whether the Prosecution could bring the Conspiracy Charges as separate charges

Mr Soh and Ms Quah submitted that the Conspiracy Charges were defective because they related in essence to the same overarching conspiracy. Mr Soh submitted that only one charge under section 120B of the PC should have been brought. Ms Quah differed slightly and submitted that there should have been one charge for each sub-category of the Conspiracy Charges, such that there should only have been one False Trading and Price Manipulation Charge, one Deception Charge, and one Cheating Charge. These arguments were based on the following considerations:

a) Each charge related to the same overarching Scheme; and
b) The HC erred in relying solely on the existence of the overarching Scheme to infer the existence of the separate conspiracies for each Conspiracy Charge.

On the *first consideration*, the CA held that that it would be overly simplistic to read section 132(1) of the CPC (as Mr Soh and Ms Quah argued) such that an agreement to commit multiple offences can only amount to a single offence of criminal conspiracy, and hence only one single charge would arise. The object behind section 132(1) is to avoid prejudice to the accused person in having to defend against distinct offences that are lumped together in one charge. The question is whether the Conspiracy Charges each amount to a distinct offence. If so, there can be nothing objectionable about the bringing of separate charges. This would not only be permitted but mandated by section 132(1) of the CPC.

The CA first stressed that there may be multiple types of agreements to commit multiple offences, which allow the Prosecution to proceed in differing manners:

a) Where the accused persons enter into multiple separate agreements to commit each of the offences, the Prosecution may generally only proceed with separate charges for criminal conspiracy, with each charge corresponding to each agreement to commit an offence.
b) Where the accused persons enter a single agreement to commit multiple offences – for example a single agreement to steal a vehicle to traffic controlled drugs, the Prosecution may ordinarily only bring a single charge in relation to the single agreement.
c) Where the accused persons enter an overarching agreement to commit all the offences, as well as separate additional agreements to commit each of the offences, the Prosecution has the discretion to determine how broadly or narrowly it wishes to frame the charges for criminal conspiracy. It may choose to bring a single charge in relation to the overarching agreement, or separate charges in relation to each separate agreement to commit each offence.

Here, the Scheme was not the subject of any of the Conspiracy Charges. Instead, it formed the overarching factual background to all the Conspiracy Charges, explaining the motive and context behind those charges. Therefore, separate charges could be brought for each of the charges because each charge related to a separate and distinct conspiracy or agreement. It was permissible for each of the False Trading Charges to be categorised according to each of the three counters (rather than a single charge for all three counters) because it was not Mr Soh and Ms Quah's case that there was only a single agreement to undertake all the conduct involving all three counters. Further, as a matter of logic, where different counters are concerned it seems that each agreement would be to carry out a distinct offence, therefore forming the subject of a separate charge.

On the *second consideration*, the CA held that the HC did not assume the existence of the individual conspiracies from the existence of the Scheme. When deciding on whether the False Trading Charges were made out, the HC explicitly recognised that it was not sufficient that the overarching Scheme existed and that Mr Soh and Ms Quah controlled the Relevant Accounts. She examined each charge to determine whether each conspiracy could be inferred. For example, on False Trading Charges, the HC examined the extent to which the Relevant Accounts had been used to trade in Blumont shares, and the fact that the Relevant Accounts had substantially increased their shareholding of Blumont shares for the specified period in order to infer the existence of the specific conspiracy for the first charge. The HC did not just assume, from her finding of the existence of the Scheme, that the False Trading Charges were made out. Rather, she was alive to the Prosecution's burden to separately establish the individual conspiracies underlying the False Trading Charges and carefully considered the factual nuances specific to each of these conspiracies. Indeed, for the Deception Charges, the HC acquitted Mr Soh and Ms Quah of several charges because there was insufficient evidence to show that the accounts in question were controlled by them, and because the accounts in some of the Deception Charges had been concealed by Mr Soh from Ms Quah.

C. Whether the charges were made out on the facts

The CA also considered the arguments that the Conspiracy Charges were not made out. Mr Soh and Ms Quah argued, among other things, that:

i) The False Trading and Price Manipulation Charges were not made out: they were not in control over the Relevant Accounts and therefore could not have made those trades;

ii) The Deception Charges were not made out: there was no deception because they were permitted to use the Relevant Accountholders' accounts and the trading representatives ("TRs") of the relevant FIs were aware of their involvement.

iii) The Cheating Charges were not made out: *first*, they had merely omitted to inform the providers of margin financing that the BAL shares were the subject of manipulative trading practices; *second*, Goldman Sachs International ("Goldman Sachs") and Interactive Brokers LLC ("IB") cannot be said to have been deceived because they conducted their own due diligence before extending financing.

The False Trading and Price Manipulation Charges pertained to Mr Soh's and Ms Quah's practices of "wash trading" and "aggressive trading" of the BAL shares. The Deception Charges pertained to the use of the Relevant Accountholders' accounts to conceal their involvement in the orders and trades of BAL shares. The Cheating Charges pertained to inducing Goldman Sachs and IB to provide margin financing, by representing that the BAL shares were legitimate collateral for said financing when the BAL shares were in fact the subject of manipulative trading practices.

In considering these arguments, the CA first reiterated that it is not the role of an appellate court to retry a matter that comes before it, and there is a high threshold that must be met before findings of fact will be overturned. A party seeking to appeal a factual finding must also identify precisely how the trial judge is said to have erred.

(i) <u>The False Trading and Price Manipulation Charges</u>

Mr Soh's and Ms Quah's objections to the False Trading and Price Manipulation Charges focused on the HC's factual findings. Their primary strategy in the proceedings below was to challenge the cogency and credibility of the evidence of the alleged rogue traders who testified on behalf of the Prosecution. However, the CA noted that the HC had remained mindful of the fact that a key strand of Mr Soh's and Ms Quah's case at trial was that the bulk of the trading activity in all the Relevant Accounts had been

conducted without their knowledge or involvement. The burden was on Mr Soh and Ms Quah to show that the HC's assessment of the alleged rogue traders' evidence was plainly wrong or against the weight of the evidence.

The CA held that the HC had evaluated the evidence appropriately before making the factual finding that Mr Soh and Ms Quah were in control of the Relevant Accounts. The HC took a careful and holistic consideration of various interlocking strands of evidence, including the testimonies of various witnesses, the expert evidence and the objective evidence, before coming to a conclusion as to whether Mr Soh and Ms Quah had been in control of each of the Relevant Accounts.

The CA further found that Mr Soh's and Ms Quah's version of events did not cohere with the evidence, and that they failed to show that the HC was plainly wrong in its analysis of the available evidence or that the findings made were clearly against the weight of the evidence. This failed to meet the threshold for the CA to interfere with the HC's factual findings. Hence the CA upheld the HC's finding of fact that Mr Soh and Ms Quah were in control of the Relevant Accounts. Because the HC's main factual findings were upheld, and the objections to the False Trading and Price Manipulation Charges centred around these factual findings, the convictions on the False Trading and Price Manipulation Charges were upheld.

(ii) The Deception Charges

On the Deception Charges, the CA held that first, it was irrelevant that the Relevant Accountholders or authorised persons knew of or permitted Mr Soh's and Ms Quah's use of their accounts because the victims of the deceptions were not the authorised persons but the FIs. Second, the representatives of multiple FIs testified that even if the individual giving instructions was the accountholder or an authorised representative, concerns would remain about the possibility of nominee trading or other illicit trading activities. Third, it could not be within the TRs' authority to accept third-party trading instructions without formal authorisation because that would be against the Singapore Exchange Securities Trading Limited Rules (the "SGX-ST Rules").

Even if the TRs were acting within their actual or ostensible authority, the principles of attribution would be inapplicable to impute their knowledge to the FIs. This is because an individual's knowledge or state of mind should not be attributed to a company "where the company is itself the target of [the] agent's … dishonesty". In the present case, the FIs were the victims of the TRs' dishonesty and breaches of the SGX-ST Rules. The TRs' knowledge that Mr Soh and Ms Quah were involved therefore could not be attributed to the FIs. Hence the convictions on the Deception Charges were upheld.

(iii) The Cheating Charges

On the Cheating Charges, the CA held that Mr Soh and Ms Quah's representation to Goldman Sachs and IB that the BAL shares were collateral for margin financing was a positive representation that amounted to a deception. Further, the representatives of Goldman Sachs and IB testified at trial that they would not have provided margin financing to the Relevant Accounts had they known that the BAL shares were the subject of manipulative trading practices. Hence the convictions on the Cheating Charges were upheld.

IV. Conclusion

The CA dismissed the appeal, upholding Mr Soh's and Ms Quah's convictions.

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