

**A revised sentencing framework for
breach of directors' duties for nominee directors:
Public Prosecutor v Zheng Jia [2025] SGHC 76; [2025] 3 SLR 1290**

I. Executive summary

This case concerned a chartered accountant who ran a business of incorporating companies in Singapore for numerous foreign companies and offered his services as a locally resident nominee director. In undertaking this role, he had failed to exercise reasonable diligence in overseeing the Singapore companies' affairs as required under law, allowing them to perpetuate certain scams.

In deciding this case, the High Court (“**HC**”) set out a revised sentencing framework (the “**Revised Framework**”) for nominee directors who breached their duty to act with reasonable diligence under section 157(1) of the Companies Act (Cap 50, 2006 Rev Ed) (“**CA**”). This revised framework entails identifying relevant offence-specific factors, situating the offence within an appropriate sentencing band, and then finally calibrating the sentence with offender-specific factors.

In so doing, the HC rejected the use of a previous framework set out in the case of *Abdul Ghani bin Tahir v PP* [2017] 4 SLR 1153 (“**Abdul Ghani**”) for sentencing in relation to offences under section 157(1) of the CA.

II. Material facts

The respondent, Zheng Jia, operated a business of incorporating companies in Singapore on behalf of foreign clients, to fulfil Singapore's corporate regulations which require Singapore companies to have a locally resident director so as to prevent abuse.

In May 2020, Zheng Jia incorporated Ocean Wave Shela Pte Ltd (“**Ocean Wave**”) on behalf of one Zhong Haibo (“**Zhong**”). Zheng Jia and Zhong were listed as Ocean Wave's directors, and Ocean Wave was able to open a bank account with United Overseas Bank Ltd (the “**Ocean Wave UOB bank account**”) with Zheng Jia's help.

In October 2020, an American company, Source Substrates LLC, fell victim to a scam and was deceived into transferring US\$64,630 to the Ocean Wave UOB bank account. The moneys were subsequently channeled to a bank account in China. On this, Zheng Jia admitted that he had exercised no supervision as a director over the general affairs of Ocean Wave, including the bank transactions. Zheng Jia was charged with one count of failing to exercise reasonable diligence in the discharge of his duties as a director of Ocean Wave under section 157(1) of the CA (the “**1st charge**”).

Sometime between April to June 2020, Zheng Jia's business model expanded, and he recruited one Er Beng Hwa (“**Er**”) to join him in acting as a local resident director for foreign companies. Er was then registered as a director and secretary of Rui Qi Trading Pte Ltd (“**Rui Qi**”) and opened 2 bank accounts in Singapore for Rui Qi. These accounts were used to receive and transmit the proceeds of scams perpetrated against 3 foreign companies, which amounted to US\$2,183,936 and S\$237,120. For this, Er was separately fined \$4,000 and was disqualified from acting as a director or taking part in management activities. For Zheng Jia, he admitted to assuring Er that there was no need for Er to involve himself in the management of the companies or to monitor their bank accounts. He also admitted to not giving Er any information concerning Rui Qi after its incorporation. In light of this, Zheng Jia

faced another charge under section 157(1) of the CA read with section 109 of the Penal Code (Cap 224, 2008 Rev Ed) (“**PC**”) of abetting, by intentionally aiding, Er’s omission to exercise reasonable diligence in the discharge of his duties as a director of Rui Qi (the “**2nd charge**”).

The lower court applied the framework from *Abdul Ghani* (the “**Abdul Ghani framework**”) and imposed on Zheng Jia fines of \$3,500 and \$5,000 for the 1st and 2nd charges, respectively. Zheng Jia was also disqualified from acting as a director for 5 years. However, the Prosecution was dissatisfied with the lower court’s decision not to impose a jail term and appealed.

III. Issues

On appeal, the HC considered the following:

1. Whether the *Abdul Ghani* framework was appropriate for an offence under section 157(1) of the CA; and
2. The application of a Revised Framework to Zheng Jia’s offences.

A. *Whether the Abdul Ghani framework was appropriate for offences under section 157(1) of the CA*

(i) Abdul Ghani framework and its issues

The HC first expressed concerns with the *Abdul Ghani* framework in respect of section 157(1) offences. *Abdul Ghani* concerned an accountant who acted as a director for foreign entities to facilitate local company incorporation, and who had failed to exercise reasonable diligence in the discharge of his directorial duties, which led to the commission of money laundering offences with one of the companies. The accountant was charged with six counts under section 47(1)(b) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) (“**CDSA**”), as well as one charge of having failed to exercise reasonable diligence in the discharge of his duties as a director under section 157(1) of the CA. The district judge sentenced the accountant to an aggregate imprisonment term of 26 months and 4 weeks. However, the accountant’s appeal on sentence before the High Court was allowed and he was eventually sentenced to 12 months’ imprisonment and a S\$50,000 fine.

The HC opined in *Abdul Ghani* that there were two rationales underpinning section 157(1) of the CA: the need to (a) protect the public by deterring directorial misconduct, and (b) preserve a vibrant commercial environment by not over-detering the commercial market. Given this, the court held that the starting point for sentencing of “purely negligent breaches” of a director’s duty to exercise reasonable diligence under section 157(1) of the CA was a fine. Custodial sentences were reserved for situations where the director had breached his duty “intentionally, knowingly or recklessly”. On this basis, the following notional maximum sentences could be imposed: (a) 12 months’ imprisonment for dishonesty or intentional/knowing disregard of the director’s duty to exercise reasonable diligence in the discharge of his duties; (b) 6 months’ imprisonment for a reckless failure to exercise reasonable diligence; and (c) 3 months’ imprisonment for a negligent failure to exercise reasonable diligence.

The HC expressed concerns with the *Abdul Ghani* framework. While the HC in *Abdul Ghani* made several observations on sentencing under section 157(1) of the CA, that case was ultimately not one where the issue was solely focused on that question of sentencing (in contrast to the present case). The charge under section 157(1) of the CA in *Abdul Ghani*

formed, at best, a relatively minor part of the overall criminality alleged against the accountant in that case. The HC stressed that where the focus of the sentencing court is on a particular offence (in the case of *Abdul Ghani*, on offences under the CDSA), that may diminish the weight of its observations in respect of other offences.

Further, the HC noted that a duty to exercise reasonable diligence under section 157(1) of the CA is a broad one that is capable of being breached in many ways. As such, one could not realistically formulate an omnibus sentencing framework that catered to every breach of the duty. Instead, any such sentencing framework must respond to the particular facts and nature of the offence in question.

The HC also disagreed with the *Abdul Ghani* court's view 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". This was too broad a statement, and also overlooked the gross differences between a director who assumes office with the intention of neglecting his directorial duties and a director who is committed to the best interests of the company but makes a mistake in the course of his duties.

(ii) Young Independent Counsel's proposed framework and its issues

The HC also rejected a proposed framework submitted by a Young Independent Counsel, Mr Kwong Kam Yin ("**Mr Kwong**"). Mr Kwong submitted that the *Abdul Ghani* framework was inappropriate due to its inordinate emphasis on the offender's culpability without sufficiently considering the harm caused by the offence. Mr Kwong's own proposed framework entailed identifying offence-specific factors in relation to the harm caused and the offender's culpability to arrive at an indicative starting sentence, and then calibrating it with offender-specific factors to arrive at a final sentence. However, the HC considered that Mr Kwong's framework overemphasised the consideration of the harm caused by the offence and would give this single factor (which the offender typically has no control over) an excessive and distorting effect on sentencing outcomes. This was unsatisfactory as it introduced an element of fortuity to the sentencing exercise.

(iii) Revised Framework

The HC thus set out its Revised Framework. The HC noted that this Revised Framework, though somewhat similar to the approach taken in *Abdul Ghani*, contained material differences, including that the relevant factual context is confined to this type of case involving professional directors whose business models were premised on providing no or inadequate oversight over the affairs of the companies. Close attention is also paid to the real nature of the offender's culpability.

The sentencing exercise should proceed in three steps: identifying all relevant offence-specific factors; situating the offence within the appropriate sentencing band; and then calibrating the indicative sentence with offender-specific factors.

Step 1: Identifying the relevant offence-specific factors

The HC set out a non-exhaustive list of offence-specific factors that the court can consider:

- 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 (particularly 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 schemes (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.

The HC also stressed that it was imperative that the sentencing court remain sensitive to the particular facts of each individual case.

Step 2: Situating the offence within the appropriate sentencing band

The next step is to place the offence within the appropriate sentencing band to arrive at an indicative sentence. The table below sets out the appropriate sentencing bands for offences of the kind that arose in this appeal.

	Number of offence-specific factors	Indicative starting sentence
Band 1	1–3	Up to four months' imprisonment
Band 2	4–5	Five to eight months' imprisonment
Band 3	> 6	Nine to 12 months' imprisonment

The custodial threshold will be presumptively crossed for offences of the present category, and the onus will be on the director to explain why that should not operate in his or her case. Although the sentencing framework must respond to the particular facts of the case, the current case was not one which entailed a director who committed an isolated negligent breach of his duties. There was a gross difference between a director who deliberately neglects his directorial duties, and one who is committed to the best interests of the company but who makes a mistake in carrying out his duties. The former category of directors present serious risks to their companies and to Singapore's corporate and financial ecosystem, and thus the HC opted to depart from the *Abdul Ghani* framework in this case.

The HC stressed that this step should not be approached as purely an exercise in counting the number of offence-specific factors. Instead, the table was to be treated as a *guideline*. The court must in every case consider the gravity of the salient factors to determine which band to situate the offence in, as well as where the offence falls within the applicable band.

Step 3: Calibrating the indicative sentence for offender-specific factors

After deriving an indicative sentence at the second step, the third and final step would be to adjust that indicative sentence based on offender-specific factors relevant to the case.

The HC noted that the factors falling within this category are generally uniform across all criminal offences, and would include matters such as:

- a) other offences taken in consideration for the purposes of sentencing;

- b) the offender's relevant antecedents;
- c) remorse (or the lack thereof) on the offender's part;
- d) whether the offender entered into a timeous plea of guilt;
- e) the extent of voluntary restitution made by the offender; and
- f) whether the offender voluntarily co-operated with the authorities in the course of investigations into the offence.

(iv) Application of the Revised Framework to offences of abetment

The HC further held that the Revised Framework is equally applicable to the sentencing of accessories to a breach of director's duty under section 157(1) of the CA. The key difference lies in the offence-specific factors which may be accounted for at the first step of the Revised Framework. The focus would be on 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. Ultimately, a commonsensical approach should be taken in every case to identifying the pertinent offence-specific factors.

B. Application of the Revised Framework to Zheng Jia's offences

Regarding the 1st charge, the HC concluded that the offence fell within Band 2 of the Revised Framework. This was because of the following reasons:

- a) Zheng Jia was a chartered accountant who plainly did contemplate that Ocean Wave could be used for illegal purposes. He also admitted to having been familiar with the duties of his office as a director of Ocean Wave.
- b) Zheng Jia took virtually no steps to try to understand Ocean Wave or Zhong's background and business activities, or to monitor the Ocean Wave UOB bank account.
- c) Zheng Jia's failure to exercise reasonable diligence in his directorial duties with regard to Ocean Wave was merely one out of 384 such companies where he was registered as a nominee director and engaged on terms that limited his duties to "the signing of statutory forms and board resolutions", and which was also subject to the proviso that he would not be required to participate in the management of the companies. This suggested that he likely knew that he was making available companies that could be used for illicit purposes by entities outside Singapore.
- d) Zheng Jia conducted himself in such a manner due to the recurring profits he stood to make from his business.
- e) Finally, the harm that had been enabled by the offence was not insubstantial.

Considering all these factors, the HC concluded that the offence sat comfortably in Band 2 of the Revised Framework, warranting an indicative sentence of 5 months' imprisonment.

For the 2nd charge, the HC concluded that the offence fell within Band 3 of the Revised Framework. This was because Zheng Jia had recruited Er, who was unemployed at the time and was wholly unfamiliar with the duties of a local resident director, for the sole purpose of meeting the demand of Zheng Jia's growing business. In fact, Zheng Jia gave Er unequivocal instructions to adopt a hands-off approach as a nominee director of Rui Qi. This profit-driven exploitation of Er's ignorance was, additionally, reflected in the very low remuneration he paid Er in relation to what he was paid by his customers, a factor that significantly aggravated Zheng Jia's culpability. Further, the harm caused by this second offence, concerning proceeds of over US\$2m stolen from three victims, was considerably greater than that of the first,

which involved US\$64,630. Thus, this offence was properly situated within the apex band of the Revised Framework and warranted an indicative sentence of at least 10 months' imprisonment.

Finally, the court considered that Zheng Jia had pleaded guilty and was thus accorded some mitigatory weight under the third step of the Revised Framework. Weighing everything together, the HC concluded that it was appropriate to impose consecutive sentences: (a) three months' imprisonment for the 1st charge, and (b) seven months' imprisonment for the 2nd charge.

IV. Lessons learnt

The HC, in proposing a revised framework for the breach of directorial duties, affirms its tougher stance against nominee directors who abuse their positions by failing to discharge their duties with reasonable diligence. Corporate bodies will have to be mindful of the expectations of directors and to be prudent not to abuse the system.

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