"Sentinels, not Sleuths": A Clarification of Directors' Duties in Singapore
Goh Jin Hian v Inter-Pacific Petroleum Pte Ltd [2025] 1 SLR 872; [2025] SGHC(A) 7

I. Executive Summary

Directors in Singapore are subject to both statutory and common law duties. These include the duty of due skill, care, and diligence ("Care Duty"), as well as the duty to act in the best interests of the creditors ("Creditor Duty").

Goh Jin Hian v Inter-Pacific Petroleum Pte Ltd [2025] 1 SLR 872 expounded on the extent and scope of these duties. Notably, the Appellate Division of the High Court ("HC(A)") held that whether there is a breach of a director's duty to act in the interests of his company is based on the director's *subjective* intentions. Additionally, while directors are expected to safeguard the interests of their company, they are not expected to proactively uncover fraud if there are no obvious red flags or indication of wrongdoing.

Further, the HC(A) also held that a party alleging that it has suffered loss by a reason of a breach of the Care Duty bears the legal burden of establishing causation. To prove causation, the party would have to prove the specific steps that would have been taken by the director in the discharge of their duty and how these steps would have averted the loss. The counterfactual must be *prima facie* proven before the evidential burden shifts to the defendant to refute causation.

II. Material Facts

The appellant, Dr Goh Jin Hian ("Dr Goh"), was a former director of the respondent company, Inter-Pacific Petroleum Pte Ltd ("IPP"). IPP had two lines of business, namely cargo trading and bunker trading. IPP's cargo trading business involved the back-to-back purchase and sale of fuel oil, where the delivery was conducted directly by IPP's suppliers to its customers. IPP's bunker trading business involved the purchase and delivery of bunker fuel; it required IPP to maintain a bunker supplier licence and a bunker craft operator licence.

IPP obtained financing facilities from two banks: Societe Generale, Singapore Branch ("SocGen"), and Malayan Banking Berhad ("Maybank") (collectively, the "Banks", and the "Facilities"). The SocGen facility was available for both the cargo and bunker trading businesses, and the Maybank facility was available only for the cargo trading business.

IPP's fraudulent cargo transactions were uncovered following a Maritime Port Authority of Singapore ("MPA") enforcement check on IPP's bunker tankers on 13 June 2019. The MPA discovered that the mass flow meter of a bunker tanker chartered by IPP had been tampered with. It thus temporarily suspended IPP's bunker craft operator licence. IPP sought to lift this suspension and entered negotiations with the MPA. These negotiations were spearheaded by Dr Goh, who also corresponded with the Banks to reassure them regarding the impact of the suspension on the bunker trading business.

On 12 August 2019, Dr Goh was informed by one of the other directors of IPP that IPP was unable to pay its debts to its bank creditors, leading to his resignation on the same day. An application to have IPP placed under judicial management was filed shortly after, on 16 August 2019. On 22 August 2019, Dr Goh met with the Banks and discovered the extent of IPP's indebtedness: IPP owed approximately US$90 Million to SocGen and US$60 Million to Maybank. On the same day, Dr Goh sent an email to the Singapore Police Force to report the debt exposure and highlight the possibility of fraud in the transactions.

IPP was placed under interim judicial management on 29 August 2019, and under judicial management on 4 September 2019. IPP's judicial managers ("JMs") subsequently concluded that between 21 June 2019 and 2 August 2019, IPP made substantial, unrepaid drawdowns on the Facilities: the "Cargo Drawdowns" (US$146,047,099.60 for cargo trades) and the "Bunker Drawdowns" (US$10,508,238.71 for bunker trades).

The JMs also discovered that large sums were purportedly due and owed by various customers to IPP for cargo sales. When the JMs sought to collect these sums, the customers denied liability on the ground that they did not enter the trades in question. The JMs concluded that these were sham transactions.

A. IPP's Case

IPP alleged that as an executive director, Dr Goh should be held to a higher standard of care than a non-executive director. In the alternative, he ought to have taken reasonable steps to place himself in a position to guide and monitor the company's affairs and management. Specifically, IPP claimed that Dr Goh breached the Care Duty and the Creditor Duty.

Care Duty

IPP alleged that Dr Goh had breached this duty as: (a) he was unaware of the cargo trading business; and (b) he should have acted with reasonable skill and care in respect of three "red flags" that concerned the cargo trading business, as follows:

- an audit confirmation request signed by Dr Goh to Mercuria Energy Trading Pte Ltd ("Mercuria") specifying receivables due and owing by Mercuria to IPP ("Mercuria ACR");
- the suspension of IPP's Bunker Craft Operator Licence in June 2019 ("Suspension"); and
- three confirmations of indebtedness signed by Dr Goh in July 2019 which had been sent to Maybank before IPP had applied for judicial management ("Maybank Confirmations").

As a director he had failed to acquire and maintain a sufficient knowledge and understanding of IPP's business, particularly the cargo trading business. As the cargo trading business was the source of the fraud, Dr Goh's lack of awareness of the business was an egregious breach of the Care Duty. Further, Dr Goh had failed to act with reasonable skill and care in the face of the red flags that would have led him to inquire into IPP's financial position, uncovering the sham cargo trades.

IPP asserted that due to Dr Goh's breach of the Care Duty, he failed to prevent IPP from making the Cargo Drawdowns, leading to losses in the form of liability owed to the Banks. Had he investigated the red flags, he would have discovered that the receivables were for sham cargo transactions. But for Dr Goh's breach of the Care Duty, the fraud and loss would have been averted as any reasonable director would have stopped the Cargo Drawdowns.

Creditor Duty

In relation to the Creditor Duty, IPP claimed against Dr Goh for allowing the Cargo and Bunker Drawdowns while the company was balance-sheet insolvent and/or in a parlous financial position. His failure to ensure that IPP's assets were not dissipated was a breach of the Creditor Duty, causing IPP to suffer loss in the form of its liability to the Banks. IPP pointed out that there was a significant difference between the cargo trades and the bunker trades, where the former were sham transactions but the latter were not. Nonetheless, in relation to the Bunker Drawdowns, IPP submitted that it suffered loss because there was no reasonable prospect that it would be able to repay the Banks, even if the bunker trades were genuine.

B. Dr Goh's Case

Care Duty

In relation to the Care Duty, Dr Goh asserted that he had acted as a non-executive director from 2015 to 2019. Thus, he was subject to a lower standard of care and entitled to rely on information provided by other directors and IPP's employees. He also denied being unaware of the cargo business and claimed the three red flags were insufficient to trigger further inquiry. He also disputed causation, submitting that he was unlikely to have uncovered the fraud even if he had discharged the Care Duty as any attempt to investigate would have been blocked by other directors and employees of IPP involved in the fraudulent scheme.

Creditor Duty

In relation to the Creditor Duty, Dr Goh submitted that the duty was not engaged as IPP had not demonstrated that it was insolvent or in a parlous financial position at the material time, and that he had or ought to have known of this. Even if it was engaged, he had reasonably believed that the drawdowns were in IPP's interests. In any case, the breach of the Creditor Duty should be limited to the Cargo Drawdowns linked to the signed Maybank Confirmations that he was aware of.

C. Judgment below

The General Division of the High Court ("HC") found Dr Goh liable for breach of both the Care Duty and the Creditor Duty in relation to the Cargo Drawdowns, and breach of the Creditor Duty in relation to the Bunker Drawdowns.

On the Care Duty, the HC found that Dr Goh ought to be held to the standard of a reasonably diligent executive director, as the evidence showed his high level of involvement in the management decisions for IPP, although he did not possess any special skills or expertise. The HC found that he had breached the Care Duty, as he was ignorant of the cargo trading business. It also found that Dr Goh had failed to act reasonably in the face of the three "red flags".

The HC then held loss was caused due to such breach of the Care Duty. *First*, as a matter of common sense, the losses would not have occurred but-for Dr Goh's ignorance of the cargo trading business, which enabled its use as a vehicle for fraud. *Second*, even if he was not ignorant, Dr Goh did not act reasonably in relation to the Mercuria ACR. But-for this breach of duty, IPP would not have made the Cargo Drawdowns.

The HC also found that the Creditor Duty was engaged as IPP was balance sheet insolvent at the material time. The Creditor Duty had been breached notwithstanding that Dr Goh was not aware of the cargo trading business or the cargo trades. This was because the test for whether the Creditor Duty was breached was not purely subjective. Finally, the HC found that IPP had proven its loss in relation to the Cargo Drawdowns, but not the Bunker Drawdowns. Dr Goh appealed.

III. Issues

On appeal, the HC(A) considered the following:

A. Whether Dr Goh had breached the Care Duty;
B. Whether Dr Goh had breached the Creditor Duty;
C. Whether IPP had suffered loss; and
D. Whether the breach of the Care Duty and the Creditor Duty caused the loss to IPP in relation to the Cargo Drawdowns.

A. Whether Dr Goh breached the Care Duty

The HC(A) held that Dr Goh breached the Care Duty because he was unaware of the cargo trading business. However, it held that Dr Goh did not breach the Care Duty as regards the red flags.

The HC(A) first stated the appropriate standard of care for directors. Section 157(1) of the Companies Act 1967 (2020 Rev Ed) ("Companies Act") provides that a "director must at all times act honestly and use reasonable diligence in the discharge of the duties of his or her office". The standard of care to be applied "will not be lowered to accommodate any inadequacies in the individual's knowledge" and will instead "be raised if he held himself out to possess or in fact possesses some special knowledge or experience." Further, all directors, regardless of whether they are engaged in an executive or non-executive capacity, are subject to the "minimum objective standard of care which entails the obligation to take reasonable steps to place oneself in a position to guide and monitor the management of the company".

(i) Dr Goh's ignorance of the cargo trading business

The HC(A) held that there was no reason to disturb the HC's finding that Dr Goh was unaware of the cargo trading business. The HC relied on four pieces of documentary evidence to arrive at their finding: (a) an email sent by Dr Goh to the Singapore Police Force; (b) the transcript of Dr Goh's interview with the JMs; (c) a WhatsApp conversation between Dr Goh and the Chief Financial Officer of IPP; and (d) various communications from Dr Goh following the Suspension. A plain reading of the four pieces of evidence showed that Dr Goh was indeed ignorant of the cargo trading business. As such, the HC(A) agreed with the HC that Dr Goh breached the Care Duty because he was not aware of the cargo trading business.

(ii) Dr Goh's failure to respond to the three red flags

The central question here was whether the purported red flags were in fact red flags on the cargo trading business that should have put Dr Goh on inquiry. The HC(A) found that Dr Goh had in fact not breached the Care Duty in respect of the three red flags.

1. The Mercuria ACR. The Mercuria ACR formed the basis of IPP's case here, as it was the only red flag that arose prior to, and thus could have prevented, the Cargo Drawdowns.

The Mercuria ACR was an audit confirmation request to Mercuria prepared by the auditor and signed by Dr Goh. An audit confirmation request is used by auditors as part of the auditing exercise, to seek confirmation from a debtor that the debt stated in the books of the company being audited is truly due and owing. The auditor confirmed that the Mercuria ACR was for the purpose of verifying that there were debts owed by Mercuria to IPP for FY 2017, and the quantum of those debts. However, IPP argued that because there was delinquency in the Mercuria account as at the end of 2017, Dr Goh should have asked if there were any sums overdue and either chased Mercuria for payment or sought assurance from Mercuria of payment. The HC(A) disagreed with IPP.

First, an audit confirmation is about whether there is a debt, and not about whether the debt was delinquent. Unless there were signs of delinquency, or if the question of delinquency was raised, the question of delinquency was not pertinent, and the further question of whether Dr Goh should have inquired into that question would not arise. Accordingly, IPP's argument that Dr Goh should have followed up with Mercuria on payment of the receivables was a non-starter.

Dr Goh also asserted that he would only have been concerned about the receivables owed by Mercuria if there was delinquency. That a debt of US$132 million was allegedly due from Mercuria was not in and of itself enough to put him on inquiry as (a) Mercuria was a big company, and (b) the size of the receivable could be explained by IPP's sizeable trading volume with Mercuria, which was about US$1 billion. Further, Dr Goh was not informed by IPP or the auditor that the Mercuria account was delinquent.

Second, the HC(A) found that the Mercuria ACR itself did not indicate delinquency but rather suggested the contrary. It stated that the receivables were within the usual 60-day credit term. *Third*, if there was an issue of delinquency when the Mercuria ACR was executed, one would have expected the auditor and IPP's management responsible for its financials to have raised it with Dr Goh.

The HC(A) further noted that no question of delinquency arose when the FY 2017 accounts were eventually audited and issued. Accordingly, there was no evidence of delinquency to trigger further inquiry by Dr Goh, and the Mercuria ACR was not a red flag.

Finally, the HC(A) observed that although Mercuria did not respond to the Mercuria ACR, the auditor had taken alternative testing procedures to verify the existence and authenticity of the receivables owed by Mercuria. She had reconciled underlying transactions, verified with IPP the existence of outstanding receivables, and was satisfied that the accounts were free from misstatements and the receivables were not doubtful. She did not uncover any fraud, and there was no suggestion of such in the FY 2017 accounts.

While the court recognised that an audit is not the same as a fraud investigation, it emphasised that IPP's case was that the Mercuria ACR was a red flag on delinquency that should have led to inquiries into IPP's financials which would uncover the fraud, and not that Dr Goh should have undertaken an investigation to uncover fraud. However, there was no reason to say that Dr Goh should have taken further steps than what the auditor did. Since the auditor did not detect fraud during the audit, there was also no valid reason to infer that Dr Goh would have uncovered anything further had he taken similar steps as the auditor did before he signed the Mercuria ACR.

2. The Suspension. The HC(A) held that the Suspension was also not a red flag. The Suspension related to the bunker trading business. Dr Goh's focus was on negotiating with the MPA to lift the Suspension, given the adverse impact that the Suspension had on the bunker trading business, which as far as Dr Goh was concerned, was the only line of business that IPP had. In other words, Dr Goh's perception was that the Suspension threatened IPP's survival and put it at risk of liquidation because it compromised the bunker trading business.

The HC(A) rejected the argument that Dr Goh should have made inquiries to ascertain IPP's financial health and its true asset and liability position. Given Dr Goh's focus on lifting the Suspension, it was not reasonable to expect him to embark on a comprehensive review of IPP's financial position. In his mind, lifting the Suspension would resolve the issue completely. Even if he had made such inquiries, it is unclear if he would have uncovered fraud in the cargo trading business.

3. The Maybank Confirmations. The HC(A) held that the Maybank Confirmations were also not red flags. IPP's argument was that when presented with the Maybank Confirmations, Dr Goh should have asked why IPP was incurring debts when the bunker trading business had been brought to a standstill by the Suspension. However, had he asked, he may have found out IPP was undertaking the cargo trading business: this was not, in itself, a red flag for the reasons stated above.

To conclude: the HC(A) held that the three red flags 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. As such, Dr Goh did not breach the Care Duty in this regard.

B. Whether Dr Goh had breached the Creditor Duty

The issue was whether Dr Goh had breached the Creditor Duty as regards the Cargo Drawdowns. This focussed on whether the Creditor Duty was engaged in circumstances where Dr Goh was not aware of the Cargo Drawdowns.

The HC(A) reiterated that whether the Creditor Duty is breached depends on a two-stage analysis of (a) whether the Creditor Duty has arisen, and (b) if it has, whether it has been breached.

The *first* stage involves an objective determination of the company's financial state at the time the transaction occurred or was likely to arise from the transaction. There are three broad categories of financial states here:

(a) **Category One:** where the company is solvent and able to discharge debts;
(b) **Category Two:** where the company is imminently likely to be unable to discharge debts. This includes situations where a director ought reasonably to apprehend that a transaction would render the company imminently likely to be unable to discharge its debts; and
(c) **Category Three:** where insolvency proceedings are inevitable.

The *second* stage utilises the company's financial state as a yardstick to examine the subjective intentions of the director, and determine if they acted in what they considered to be the best interests of the company. In Category One, the Creditor Duty does not arise as a discrete consideration, and the director need not do anything more than act in the best interests of the shareholders. In Category Two, the court will scrutinise the subjective *bona fides* of the director with reference to the potential

benefits and risks of the transaction. In Category Three, there is a shift from the shareholders to the creditors as the main economic stakeholders of the company, as the company assets would be insufficient to satisfy the creditor claims. Thus, the Creditor Duty operates to prohibit directors from authorising corporate transactions that exclusively benefit shareholders, or themselves, at the expense of the creditors.

If a director is found to have breached the Creditor Duty, the court should consider whether it is appropriate to relieve him of liability under section 391 of the Companies Act. The court retains the discretion to relieve such a director from liability, provided he had acted reasonably and honestly, and it was fair to excuse the default. However, this issue did not arise as Dr Goh did not breach the Creditor Duty.

The HC(A) stressed that the touchstone for whether there is a breach of the Creditor Duty is the director's subjective state of mind in procuring the company to enter into the transaction in question (with reference to the financial state of the company at the material time). In assessing the director's assertion of good faith, the court will assess the claim objectively by asking whether the view the director claims to have formed was reasonably open to him or her based on the available information. As such, the Creditor Duty is only engaged if the director has authorised the relevant transaction.

Given the above, the HC(A) disagreed with the lower court's finding, holding that Dr Goh could not have breached the Creditor Duty if he did not exercise any discretion in relation to the Cargo Drawdowns.

C. Whether IPP had suffered loss

The HC(A) agreed with the HC that the IPP had suffered loss by virtue of the Cargo Drawdowns.

D. Whether Dr Goh's breach of duty caused loss to IPP

The HC(A) held that the correct approach to causation would be to consider whether the loss in question would have been avoided if Dr Goh had discharged the Care Duty. This is a burden which IPP had to discharge but failed to do so.

To establish causation, IPP had to prove, on a balance of probabilities, that but for Dr Goh's breach of duty, it would not have suffered loss. It follows that the claimant must then show what would have occurred if the duty had been discharged. This would require establishing the counterfactual – that the loss would not have been suffered if the duty had been discharged. The claimant bears the burden of proving causation on a balance of probabilities. And in a case where the claim for loss arises from a director's breach of duty, the burden is on the party alleging the breach to prove causation and loss on a *prima facie* basis by establishing the counterfactual. The evidential burden shifts to the director to refute causation and loss only if that burden has been discharged.

Thus, IPP would have to first prove the counterfactual: that had Dr Goh discharged his duty, the Cargo Drawdowns would have been averted and loss avoided. Each step of the counterfactual must also be proved. Thus, IPP would have to assert (a) the steps that Dr Goh would have taken if he had discharged the Care Duty, and (b) how those steps would have resulted in the fraud being detected and the loss averted. Only once IPP discharged this burden on a *prima facie* basis, would the evidential burden shift to Dr Goh to demonstrate that IPP would have suffered the loss regardless of the breach.

Applying this approach, the HC(A) first noted that the HC had failed to approach causation and loss through the prism of the counterfactual. It was a leap in logic to suggest that if Dr Goh was aware of the cargo trading business, the fraud would have been averted; the causal link between the "but for" and the loss has not been established. Such a conclusion has no context, which would not be the case if the counterfactual was pleaded and established.

Further, the HC(A) observed that this was a case of a deep-seated fraud. It did not follow that if Dr Goh had been aware of the cargo trading business, he would have discovered the fraud and thereby put a stop to it. This made it all the more important for IPP to specifically plead and prove what steps would have been taken (if the Care Duty was discharged) and how that would have uncovered the fraud and averted the loss. The HC(A) stressed that this was not a finding of fact, but an illustration of the complexity inherent to the causal analysis in this case.

The HC(A) then considered whether IPP had discharged its burden of proving that the fraud would have been detected and the loss averted if Dr Goh had known that IPP was undertaking the cargo trading business, ultimately holding that it had not done so.

IPP had to prove the counterfactual, namely the specific steps that Dr Goh would have taken if he had been aware of the cargo trading business that would have prevented the fraudulent cargo trades and averted the loss. However, IPP merely relied on bare assertions to suggest that Dr Goh would have found out about the fraud and prevented the Cargo Drawdowns if he had been aware of the cargo trading business or acted reasonably in respect of the three red flags. There was no specificity as to the steps that Dr Goh would have taken if he had discharged the Care Duty, and how that would have led to the fraud being uncovered and the Cargo Drawdowns averted. Instead, IPP's arguments assumed the very facts that IPP was supposed to prove. Thus IPP's case on causation failed.

The HC(A) also made two further points. *First*, it held that it was not part of a director's duty of supervision and oversight to identify fraud unless there were tell-tale or warning signs. A director may be a sentinel, but he is not a forensics investigator or a sleuth, unless there are signs that would put him on inquiry. And there was no suggestion (apart from the "red flags" which the HC(A) had concluded were not in fact red flags) that there were any such signs. Further, there was no allegation that the auditor or IPP's financial manager alerted Dr Goh of any issues with the accounts, or that the monthly management accounts and financial statements suggested anything untoward.

Second, even if Dr Goh had known about the cargo trading business, it is fair to infer that his attitude to oversight would have been similar to the bunker trading business. His starting position would have been that the cargo trading business was conducted legitimately like the bunker trading business. Any governance framework would have been calibrated with this in mind.

IV. Conclusion

The HC(A) therefore allowed the appeal in part. While it upheld the HC's holding that Dr Goh had breached the Care Duty by reason of his ignorance of the cargo trading business, the HC(A) found that IPP had failed to show that the breach caused the loss in question (i.e. causation). It also held the Care Duty was not breached as regards the purported red flags. Finally, it found that Dr Goh did not breach the Creditor Duty in relation to the Cargo Drawdowns.

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