

CORPORATE GOVERNANCE | CAPITAL MARKETS | COMMERCIAL LITIGATION, FRAUD, ASSET RECOVERY & INVESTIGATIONS AND WHITE COLLAR CRIME

Custodial Sentence for Breach of Directors' Duty to Act Honestly and with Reasonable Diligence Under Companies Act: *Public Prosecutor v Zheng Jia* [2025] SGHC 76

Introduction

In *Public Prosecutor v Zheng Jia* [2025] SGHC 76 ("**Zheng Jia**"), the Singapore High Court fundamentally revised the sentencing framework for offences involving a breach of a director's statutory duty to act honestly and use reasonable diligence in the discharge of his duties. The decision marks a decisive shift towards custodial sentences in such cases, reflecting the seriousness with which the courts view the protection of Singapore's financial and corporate integrity.

This Update briefly discusses this case and its implications.

Facts

The respondent was a chartered accountant who operated a business of incorporating companies in Singapore, primarily on behalf of foreign clients. As part of his services, the respondent would register himself as a locally resident director of those companies and assist in opening bank accounts for them. However, the respondent exercised no control or supervision of the affairs of those companies and did not monitor or review the transactions in those bank accounts.

The respondent also engaged the co-accused to act as a nominee director on behalf of the respondent's clients. The respondent told the co-accused that he did not need to do anything other than to sign the relevant incorporation documents and account opening documents. The co-accused was also informed that he did not need to manage or run the company and did not need to check the banking transactions of the companies.

The bank accounts of two of the companies serviced by the respondent, Ocean Wave Shela Pte Ltd ("**Ocean Wave**") and of Rui Qi Trading Pte Ltd ("**Rui Qi**"), were subsequently used to receive and transmit the proceeds of scams perpetrated against foreign companies.

The respondent was convicted of two charges under section 157(1) of the Companies Act 1967 for failing to exercise reasonable diligence in the discharge of his duties as a director of Ocean Wave ("**1st**

Charge"), and for abetting his co-accused's omission to exercise reasonable diligence in the discharge of his duties as a director of Rui Qi ("**2nd Charge**").

Issues

The previous sentencing approach, as set out in *Abdul Ghani bin Tahir v Public Prosecutor* [2017] 4 SLR 1153 ("**Abdul Ghani**"), placed primary emphasis on the director's culpability—reserving custodial sentences for intentional, knowing, or reckless breaches, and generally imposing fines for negligent breaches.

In *Zheng Jia*, Chief Justice Sundaresh Menon, delivering the judgement on behalf of a panel of three judges, observed that the approach in *Abdul Ghani* was inadequate, especially in cases involving professional directors whose business models are predicated on providing little or no oversight over companies, thereby enabling abuse of corporate structures for illicit purposes. Such conduct goes beyond mere negligence and often involves a knowing or intentional abdication of duty.

The High Court held that the appropriate sentencing exercise should proceed in three steps ("**Revised Framework**"):

1. The first step is to identify all the relevant offence-specific factors. Some examples of such factors are: (i) the nature and extent of harm caused; (ii) the extent of due diligence undertaken in relation to the company; (iii) the efforts made to monitor or review transactions; (iv) whether the offending conduct was a one-off breach or part of a wider pattern; (v) whether the offending conduct was pursued as part of a business or other profit-driven scheme; and (vi) whether there was a transnational element to the offence. The Court stressed that these factors are not intended to be exhaustive and that the sentencing judge must remain sensitive to the particular facts of each case in identifying the relevant offence-specific factors.
2. The second step involves placing the offence within the appropriate sentencing band to arrive at an indicative sentence. The table below sets out the sentencing bands that the Court considered appropriate for the offences of the type with which this appeal was concerned:

	Number of Offence-Specific Factors	Indicative Starting Sentence
Band 1	1 to 3	Up to four months' imprisonment
Band 2	4 to 5	Five to eight months' imprisonment
Band 3	6 or more	Nine to twelve months' imprisonment

The facts of the present case would presumptively warrant a custodial sentence, and the onus would be on the director to explain why that should not operate in his or her case.

3. At the third step, the Court will adjust the indicative sentence arrived at based on the offender-specific factors relevant to the case. These would include: (i) offences taken into consideration; (ii) the offender's relevant antecedents; (iii) the remorse or lack thereof on the offender's part; (iv) whether the offender entered into a timeous plea of guilt; (v) the extent of voluntary restitution made by the offender; and (vi) whether the offender voluntarily cooperated with the authorities in the course of investigations into the offence.

The Revised Framework is equally applicable to the sentencing of persons who assist or aid in a breach of section 157(1) of the Companies Act 1967. The key difference lies in the type of offence-specific factors accounted for at the first step, and a commonsensical approach should be taken in every case to identifying such factors.

Applying the Revised Framework to this case:

1. Considering the number and gravity of the offence-specific factors, the 1st Charge fell within Band 2 of the Revised Framework and attracted an indicative sentence of five months' imprisonment. The 2nd Charge fell within Band 3 and warranted an indicative sentence of at least ten months' imprisonment.
2. For the purposes of the third step, some credit was given for the respondent's plea of guilt. Some moderation was also called for given that consecutive sentences were to be imposed.
3. The respondent was sentenced to three months' imprisonment for the 1st Charge and seven months' imprisonment for the 2nd Charge.

Our Comments

This case signals a clear warning to corporate service providers and nominee directors that the courts will no longer tolerate the practice of "hands-off" nominee directorship, where the business model is predicated on exercising no control or supervision over the affairs of the company.

The High Court underscored that directors who intentionally abdicate their duties, especially in high-volume, low-oversight business models, pose a serious risk to the integrity of Singapore's corporate and financial ecosystem. The decision makes clear that the rationale of avoiding "overcriminalisation" to preserve commercial vibrancy does not apply to such cases. Instead, deterrence and protection of the public and the financial system are paramount.

The responsibility lies with the directors to ensure that nominee directorships are not merely taken up "in name only". Nominee directors must be actively engaged in overseeing the affairs of the companies to which they are appointed. Failure to do so exposes both the director and the corporate service provider to criminal liability and custodial sentences.

This case serves as a reminder to all directors that, as part of their duty of care, skill and diligence to their company, they must be sufficiently apprised of their company's business and affairs to discharge their supervisory functions. The duty to monitor and supervise a company's affairs is a minimum and non-delegable obligation that applies to all directors (whether an executive, non-executive or nominee director) and cannot be disapplied or excused on the basis of ignorance or non-involvement in the business of the company.

This case also underscores the importance for directors to ensure they are up-to-date with their legal obligations and best practices in corporate governance, so that they are equipped to identify and respond appropriately to potential risks and to discharge their duties effectively.

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