IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2026] SGHC 89

Magistrate's Appeal No 9188 of 2024/01

Between

Kenneth Lum Hsien Loong

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law — Statutory offences — ss 6(*b*) and 7 of the Prevention of Corruption Act]
[Statutory Interpretation — Construction of statute — Purposive approach — Definition of "public body" — s 2 of the Prevention of Corruption Act — Whether Singapore Management University is a "public body"]
[Statutory Interpretation — Construction of statute — Principle of rectifying construction]
[Criminal Procedure and Sentencing — Sentencing — Appeals — Application of the *Wong Chee Meng* framework]
[Criminal Procedure and Sentencing — Sentencing — Appeals — Whether sentence should be enhanced after taking into consideration stood-down charges — s 390(9) of the Criminal Procedure Code 2010]

TABLE OF CONTENTS

INTRODUCTION **1**

FACTS **2**

THE PROCEEDINGS BELOW **4**

ON CONVICTION 4

ON SENTENCE 6

ISSUES TO BE DETERMINED **8**

THE APPEAL AGAINST CONVICTION **8**

WHETHER SMU IS A "PUBLIC BODY" AS DEFINED IN S 2 OF THE PCA 8

SUBMISSIONS OF THE PARTIES AND THE YOUNG INDEPENDENT COUNSEL 9

On Limb 1 ..... *9*

On Limb 2 ..... *10*

WHETHER SMU IS A "PUBLIC BODY" UNDER LIMB 1 11

The meaning of "power to act under and for the purposes of any written law" *11*

The meaning of "undertakings or public utility" *12*

(1) The principle of rectifying construction 13

(2) The meaning of "public utility" 17

Application to the facts *18*

(1) SMU Act is a "written law relating to … undertakings of public utility" 19

(2) SMU has the "power to act under" the SMU Act 19

(3) SMU has the "power to act … for the purposes of" the SMU Act 24

WHETHER SMU IS A "PUBLIC BODY" UNDER LIMB 2 26

Permutations 1 and 2 ....*26*

The ordinary meaning of "rates or charges" *28*

The meaning of "money levied or raised by rates or charges" under the 1937 Ordinance....*31*

The meaning of "money levied or raised by rates or charges" under the 1960 Ordinance and the PCA *36*

(1) The new fiscal developments in 1960....36

(2) The principle of rectifying construction....40

APPLICATION TO THE FACTS....45

THE APPEAL AGAINST SENTENCE....46

PARTIES' SUBMISSIONS 47

THE WONG CHEE MENG FRAMEWORK....48

A CUSTODIAL SENTENCE IS WARRANTED....49

The case falls within the lower end of the "slight" harm category *50*

The case falls under the mid-point of the "low" culpability category....*52*

THE 25 STOOD-DOWN CHARGES TAKEN INTO CONSIDERATION....57

CONCLUSION....59

Lum Hsien Loong Kenneth
v
Public Prosecutor

[2026] SGHC 89

General Division of the High Court — Magistrate's Appeal No 9188 of 2024/01
Sundaresh Menon CJ, Tay Yong Kwang JCA and See Kee Oon JAD
20 August 2025, 18 March 2026 and 29 April 2026

29 April 2026 Judgment reserved.

See Kee Oon JAD (delivering the judgment of the court):

Introduction

1 The appellant was convicted in a District Court of ten charges under the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) (the "PCA") for corruptly giving gratification to an employee of the Singapore Management University ("SMU"), a "public body", to advance the business interests of a company he was a director of. He was sentenced to a global term of 28 months' imprisonment.

2 The appellant appealed against his conviction and sentence. The sole disputed issue in the appeal against conviction was whether SMU is a "public body" under the PCA, such that the enhanced penalty under s 7 of the PCA applied. We held that SMU is a "public body" within the meaning of the PCA and dismissed the appeal against conviction on 18 March 2026. Having

heard oral submissions on sentence, we allow the appeal against sentence, as we find that the sentence imposed below was manifestly excessive. Taking into consideration the 25 stood-down charges agreed by the parties to be considered on appeal for sentencing, we reduce the global sentence from 28 to 15 months' imprisonment.

3 This judgment sets out the reasons for our decision, incorporating the brief oral reasons which we had delivered on 18 March 2026 and 29 April 2026.

Facts

4 The material background facts are undisputed. The appellant was a director of International Alliance Marketing Pte Ltd ("IAM"), a company which he had founded in 2014. Sometime in 2016, he became acquainted with Mr Christopher Tan Toh Nghee ("Tan"), an employee of SMU. Tan was the Associate Director of Business Development in the Service Operations & Business Improvement department of the SMU Academy, a specialised institute and professional training arm of SMU. Tan's job scope included overseeing the department's sales, revenue, programme management and programme delivery.

5 In early 2017, SMU Academy decided to engage marketing partners to promote its courses. The appellant was the first person whom Tan approached, sometime in March 2017. As the appellant was agreeable to the engagement, IAM and SMU entered into the Service Agreement (Channel Partner) on 20 April 2017 for a 12-month term. The engagement was renewed twice, first on 21 August 2017 for another 12 months, and then on 7 September 2018 for an indefinite term. Under these agreements, IAM was to market and promote SMU Academy's courses in return for a commission.

6 IAM and SMU also entered into Call Centre Management Agreements on 18 September 2017, 18 May 2018 and 24 May 2019. Under these agreements, IAM provided call centre management services to liaise with prospective applicants of SMU Academy's courses, in return for a flat monthly management fee of $3,500. IAM was also engaged, on an *ad hoc* basis, to run roadshows to promote and market SMU Academy's courses for a flat fee.

7 Sometime after the appellant had accepted Tan's offer to be a marketing partner of SMU Academy, the appellant and Tan entered into a kickback arrangement on the latter's request. Under this arrangement, the appellant agreed to pay Tan the following sums:

(a) in relation to the Service Agreement (Channel Partner), 25% of IAM's monthly earnings from SMU Academy, payable every month; and

(b) in relation to the Call Centre Management Agreement, a monthly call centre management fee (*ie*, $3,500), payable every year.

8 The appellant met Tan at least once a month to pass the sums in cash.

9 Sometime after May 2019, Tan informed the appellant that other marketing partners had agreed to give him a higher cut and sought an increase in his cut from the appellant. The appellant decided to give Tan an additional 5% cut (*ie*, a 30% cut) of IAM's monthly earnings from SMU Academy if they exceeded $100,000.

10 The appellant was charged under s 6(*b*) read with s 7 of the PCA, with 35 counts of corruptly giving gratification as a director of IAM to Tan, an employee of SMU, a "public body", to advance the business interests of IAM

with SMU. The 35 charges differed only in the dates and the quantum of gratification involved. For the purposes of the trial, 10 charges were proceeded with while the remaining 25 charges were stood down.

The proceedings below

11 The appellant admitted to all the ingredients of the offence, save for the allegation that SMU is a "public body". Hence, the sole issue at trial was whether SMU is a "public body" as defined in s 2 of the PCA. If so, s 7 of the PCA, which stipulates an enhanced maximum penalty of seven years' imprisonment rather than five years, would apply.

On conviction

12 Section 2 of the PCA defines a "public body" as follows:

> … any corporation, board, council, commissioners or other body which has power to act under and for the purposes of any written law relating to public health or to undertakings or public utility or otherwise to administer money levied or raised by rates or charges in pursuance of any written law;

13 It was undisputed that there are two limbs to the above definition. Specifically, a "public body" refers to "any corporation, board, council, commissioners or other body which has power":

(a) "to act under and for the purposes of any written law relating to public health or to undertakings or public utility" ("Limb 1");

(b) "or otherwise to administer money levied or raised by rates or charges in pursuance of any written law" ("Limb 2").

14 On Limb 1, the respondent argued that the approach adopted in *Tey Tsun Hang v Public Prosecutor* [2014] 2 SLR 1189 ("*Tey Tsun Hang (HC)*") in

finding that the National University of Singapore ("NUS") is a "public body" under Limb 1, applied equally to SMU, as both are public tertiary education providers. The respondent submitted that the court was bound by *Tey Tsun Hang (HC)*. On the other hand, the appellant argued that *Tey Tsun Hang (HC)* was overruled by *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") which set out the authoritative framework for statutory interpretation. The appellant further argued that SMU does not "act under and for the purposes of" the Singapore Management University Act 2000 (2020 Rev Ed) ("SMU Act"). Instead, it was empowered under its Memorandum and Articles of Association ("M&AA").

15 The respondent submitted in the alternative that SMU is a "public body" under Limb 2, relying on *Public Prosecutor v Tey Tsun Hang* [2013] SGDC 165 ("*Tey Tsun Hang (DC)*"), in which the court held that NUS is a "public body" as it administered public money or "money levied or raised by rates or charges". The respondent submitted that SMU is similarly empowered under the SMU Act to administer public money. The appellant disagreed, contending that there was no evidence that the funds received by SMU from the government are "levied or raised by rates or charges" or are "administered" by SMU. Alternatively, the appellant submitted that any administration of such funds is in pursuance of the M&AA, and not the SMU Act.

16 The Senior District Judge (the "DJ") convicted the appellant of all ten proceeded charges (*Public Prosecutor v Kenneth Lum Hsien Loong* [2024] SGDC 309 (the "GD") at [69]). In particular, the DJ accepted the respondent's submission that *Tey Tsun Hang (HC)* was binding on him. SMU would therefore constitute a "public body" under Limb 1 (GD at [29]). It was unnecessary to rule on whether SMU is a public body under Limb 2 (GD at [30]).

On sentence

17 In light of the DJ's finding that s 7 of the PCA was engaged, it was common ground that the sentencing framework set out in *Public Prosecutor v Wong Chee Meng and another appeal* [2020] 5 SLR 807 (the "*Wong Chee Meng* Framework") applied.

18 The DJ rejected the appellant's submissions seeking a non-custodial sentence and agreed with the respondent that the custodial threshold had been crossed (GD at [98]).

19 On harm, the DJ held that the case fell under the mid-point of the "slight" harm category (GD at [108]).

(a) First, the appellant clearly gained benefit in the form of advancing the business interests of IAM. For instance, IAM benefitted from (i) the earnings of at least $633,428 in revenue even after deducting the cut of $216,522 given to Tan; (ii) the extensions of contracts with SMU; and (iii) the roadshows secured from following Tan's suggestion on the amount to quote (GD at [100]–[102]).

(b) Further, as the respondent submitted, there was potential loss to third parties and SMU, as the gratifications contributed to IAM's continued engagement and therefore deprived SMU of the opportunity to properly consider other marketing partners and call centre management service providers who may offer better services at more competitive prices (GD at [103]–[105]).

(c) However, contrary to the respondent's submission, the case did not give rise to a level of public disquiet to justify treating that as a

separate aggravating factor. Tan was just an associate director of a tertiary education institution with a limited audience (GD at [107]).

20 On culpability, the DJ agreed with the respondent that the case fell under the lower end of the "medium" culpability category (GD at [118]).

(a) The gratification of $216,522 for the ten proceeded charges alone, was sizeable. The quantum of the bribe reflected the appellant's culpability, especially as he had negotiated the arrangement. The fact that the arrangement involved a percentage-based kickback was irrelevant. In any event, the amount of gratification to be paid in relation to the Call Centre Management Agreements was fixed from the outset (GD at [109]–[111]).

(b) The appellant was motivated by greed. The facts did not support the appellant's case that he had given gratification out of duress and to avoid harm being inflicted upon him by Tan (GD at [115]–[117]).

(c) However, the period of offending was not a separate aggravating factor as it was addressed by running the sentences consecutively (GD at [113]).

21 Based on the above, the DJ found that the indicative starting sentence under the *Wong Chee Meng* Framework was 12 to 16 months' imprisonment. As the appellant had demonstrated remorse, the DJ imposed sentences ranging between 12 and 14 months' imprisonment per charge, depending on the size of the bribe involved. Two sentences of 14 months' imprisonment each for the charges DAC-905414-2021 and DAC-905409-2021 were ordered to run consecutively. Considering parity with the two co-accused persons, the DJ held

that a global sentence of 28 months' imprisonment was appropriate (GD at [119]–[126]).

Issues to be determined

22 The appellant brought the present appeal against the DJ's decision on both conviction and sentence. The two issues for determination were:

(a) on conviction, whether SMU is a "public body" as defined in s 2 of the PCA, such that the enhanced penalty under s 7 of the PCA applied; and

(b) on sentence, whether the sentence of 28 months' imprisonment imposed below was manifestly excessive, and whether any recalibration was appropriate in light of the 25 stood-down charges agreed by the parties to be taken into consideration on appeal for sentencing.

The appeal against conviction

Whether SMU is a "public body" as defined in s 2 of the PCA

23 Section 2 of the PCA defines a "public body" as a body "which has power to act under and for the purposes of any written law relating to public health or to undertakings or public utility or otherwise to administer money levied or raised by rates or charges in pursuance of any written law" ([12] above). The interpretation of both Limbs 1 and 2 of s 2 was the focal point of the parties' arguments on appeal. In particular, the parties differed on whether the conferment of a statutory function carried with it the conferment of powers necessary to discharge that function, such that SMU can be said to have the "power to act under" Limb 1 of the SMU Act. Another key point of contention

related to the proper construction of the phrases "undertakings or public utility" and "money levied or raised by rates or charges" contained in Limb 2.

24 We held that SMU satisfied the definition of a "public body" under both Limbs 1 and 2 for the reasons that follow.

Submissions of the parties and the Young Independent Counsel

On Limb 1

25 Ms Melissa Ng ("Ms Ng") was appointed as the Young Independent Counsel to address this Court on when a public tertiary institution might be a "public body" under s 2 of the PCA. Ms Ng submitted that Limb 1 would be satisfied if the public tertiary institution was empowered under a written law relating to "undertakings *of* public utility". In that regard, Ms Ng agreed with both parties that a rectifying construction should be applied to the phrase "undertakings *or* public utility" to correct the typographical error. Applying this to the six autonomous universities in Singapore (namely, SMU, NUS, Nanyang Technological University, Singapore University of Technology and Design, the Singapore Institute of Technology and the Singapore University of Social Sciences), Ms Ng submitted that the respective Acts of Parliament governing each of these universities amounted to "written law relating to … undertakings of public utility", *ie*, public tertiary education. Ms Ng further submitted that the six autonomous universities had "the power to act under and for the purposes of" those statutes because they expressly empowered each university to carry out its statutory function of "pursu[ing] … the objects provided by its constituent documents and, in particular, to confer and award degrees, diplomas and certificates". Limb 1 was thus satisfied.

26 The appellant accepted that a rectifying construction should be applied to read the phrase in Limb 1 as "undertakings *of* public utility" to correct an obvious drafting error. This was in line with the respondent's position. However, the appellant submitted that SMU did not satisfy Limb 1 for two reasons. First, tertiary education is not an "undertaking of public utility", as "public utility" is limited to essential services such as "mass transport, electricity and gas, and water". Second, as submitted before the DJ, SMU derives its power to act under its M&AA, and not under the SMU Act.

27 The respondent submitted that SMU is a "public body" under Limb 1. First, the SMU Act, being a written law pertaining to the provision of public tertiary education in Singapore by SMU, is clearly a "written law relating to … undertakings of public utility". Second, the provisions of the SMU Act address matters relating to SMU's operations, and make clear that SMU has the "power to act under and for the purposes of" the SMU Act.

On Limb 2

28 The key issue pertained to the interpretation of the phrase "money levied or raised by rates or charges". The appellant argued that "rates or charges" are specific sources of public revenue – the former being a term of art and referring to compulsory property taxes imposed by English local authorities, and the latter referring to certain sums imposed in return for statutory services. According to the appellant, there was no principle of law upon which the phrase "money levied or raised by rates or charges" may be interpreted as public funds in general. As the respondent failed to show that SMU administered the narrow category of public money ("rates or charges"), Limb 2 was not satisfied. Ms Ng agreed with the appellant's interpretation.

29 The respondent submitted on the other hand that the phrase "rates or charges" should be interpreted broadly as "public money" on a purposive reading. In particular, either the principle of updating construction and/or rectifying construction would be applicable. The respondent argued that SMU is empowered under the SMU Act to administer public funds issued from the Consolidated Fund, thus satisfying the definition of "public body" under Limb 2.

Whether SMU is a "public body" under Limb 1

30 We turn first to address the arguments in respect of Limb 1. We first address the proper interpretation of the phrase "power to act under and for the purposes of any written law", followed by the phrase "undertakings or public utility".

The meaning of "power to act under and for the purposes of any written law"

31 Ms Ng submitted that there are two aspects to this phrase:

(a) The first is the "power to act under" a written law. This is self-explanatory in that the public body must be empowered by the relevant written law to carry out certain acts. The conferment of powers may be express or implied. It would generally be clear on the face of the written law whether an entity has been conferred with a power to act. For clarity, we highlight that the phrase "written law" is defined in s 2(1) of the Interpretation Act 1965 (2020 Rev Ed) as "the Constitution and all previous Constitutions having application to Singapore and all Acts, Ordinances and enactments by whatever name called and subsidiary legislation made thereunder for the time being in force in Singapore".

(b) The second is the "power to act … for the purposes of" the written law, which suggests that the entity must be empowered to advance the public objectives or functions of the written law. Where a written law does confer on an entity the "power to act", it may also be safely assumed that such conferment of power is to advance the purposes of that written law.

32 Both parties agreed with Ms Ng's interpretation. In our view, it is sufficiently clear and indeed self-explanatory from the express words of the said phrase that, as Ms Ng submitted, the "touchstone" is whether an entity is empowered under a written law and whether such empowerment is to advance the purposes of that written law. We also agreed with Ms Ng that the court should look at the provisions of the relevant written law to determine this inquiry.

33 Essentially, the court will look at the relevant written law as a whole to determine whether the entity is empowered to act thereunder, and whether such empowerment is to advance the objective(s) of the written law. The advancement of such objective(s) would generally follow from the conferment of such powers.

The meaning of "undertakings or public utility"

34 A "public body" under Limb 1 must be empowered to act under and for the purposes of a written law "relating to public health or to undertakings or public utility". As mentioned above, the appellant accepted that a rectifying construction should be adopted, such that the phrase "undertakings or public utility" is read as "undertakings *of* public utility". Although this point was undisputed, we take this opportunity to clarify the principles on rectifying construction and explain our reasons for agreeing with both parties.

(1) The principle of rectifying construction

35 The principle of rectifying construction is founded on the basis of rectifying "obvious drafting errors" and "plain cases of drafting mistakes" on the part of Parliament (*Kardachi, Jason Aleksander v Attorney-General* [2020] 2 SLR 1190 at [37]). The court may add or substitute words to give effect to Parliament's intentions (*Nam Hong Construction & Engineering Pte Ltd v Kori Construction (S) Pte Ltd* [2016] 4 SLR 604 ("*Nam Hong*") at [54]). In *Nam Hong*, the Court of Appeal summarised the well-established requirements for adopting a rectifying construction (*Nam Hong* at [55]):

> (a) first, it was possible to determine from a consideration of the provisions of the statute read as a whole what the mischief was that Parliament sought to remedy with the statute;
>
> (b) second, it was apparent that the draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with, the eventuality that was required to be dealt with so that the purpose of the statute could be achieved; and
>
> (c) third, it was possible to state with certainty what the additional words would be that the draftsman would have inserted and that Parliament would have approved had their attention been drawn to the omission.

36 In our view, however, not every situation calls for a rigid application of the three requirements in *Nam Hong*. The present case was one such example. Legislative errors can arise in a variety of situations. The requirements in *Nam Hong* contemplate a situation where certain words should be added or substituted to correct a clear oversight, which thereby inadvertently fails to give

effect to the legislative purpose of the statute. For instance, in *Nam Hong*, the wording of s 29A(2)(*b*) of the Building Control Act (Cap 29, 1999 Rev Ed) had the consequence of applying the coercive force of the State on the construction industry that was wider than necessary to achieve Parliament's objective. The Court of Appeal thus applied a rectifying construction to read in the additional words – taken from s 29A(2)(*a*) of the statute – to restore congruence and integrity to the statute and avert the undesirable consequences arising from the literal words of the relevant provision (*Nam Hong* at [56]–[59]). In such circumstances, the three requirements in *Nam Hong* should be applied to ensure that the court remains faithful to Parliament's intent and does not rewrite the statute in any manner the court deems fit.

37 However, where the court is faced with a simple typographical error, it is plainly not sensible to require the court to go through each of the three requirements in *Nam Hong*. The court should be able to correct a glaringly obvious error. This is consistent with the approach in *Tey Tsun Hang (HC)*. There, Woo J (as he then was) remarked that there appeared to be a typographical error in the phrase "undertakings *or* public utility" and thus read the phrase as "undertakings *of* public utility" (*Tey Tsun Hang (HC)* at [11]).

38 We agreed with Woo J's approach. Such a construction accords with a common-sense and natural reading of Limb 1. It is clear that there is a typographical error to be corrected, and this was supported by the legislative history of the PCA. The PCA can be traced back to the Prevention of Corruption Ordinance 1937 (SS Ord No 41 of 1937) (the "1937 Ordinance"). The definition of "public body" in s 2 of the 1937 Ordinance is identical to that in s 2 of the PCA, save for the following three differences: (a) the phrase used was "undertakings *of* public utility"; (b) the word used was "Ordinance" instead of "written law"; and (c) the word "council" was absent, unlike the PCA which

states "any corporation, board, *council*, commissioners or other body". This definition of "public body" in the 1937 Ordinance remained in the subsequent three ordinances – namely, the Prevention of Corruption (Amendment) Ordinance 1946 (No 26 of 1946), the Law Revision (Penalties Amendment) Ordinance 1952 (No 37 of 1952) and the Revised Edition of the Laws (Miscellaneous Amendments) Ordinance 1955 (No 8 of 1955). The Prevention of Corruption Ordinance (Cap 121, 1955 Rev Ed) also retained the phrase "undertakings *of* public utility". It was only in the Prevention of Corruption Ordinance 1960 (No 39 of 1960) (the "1960 Ordinance") – the direct predecessor to the PCA – that the material phrase had been changed to "undertakings *or* public utility".

39 The legislative materials make it unambiguously clear that the change from "of" to "or" was a typographical error. In the second reading of the bill to the 1960 Ordinance, the then-Minister for Home Affairs, Mr Ong Pang Boon, explained the objective of the 1960 Ordinance and the key changes made to the 1937 Ordinance (*Singapore Parliamentary Debates, Official Report* (13 February 1960) vol 12 ("1960 Parliamentary Debates") at cols 376–378):

> The Prevention of Corruption Bill is in keeping with the new Government's determination to ***stamp out bribery and corruption in the country, especially in the public services***. …
>
> Therefore, in this Bill, the Government is asking for new and wider powers to fight bribery and corruption. As stated in the Explanatory Statement, the object of this Bill is to ***provide for the more effective prevention of corruption by remedying various weaknesses and defects which experience has revealed in the existing Prevention of Corruption Ordinance***. …
>
> … I should, however, like to draw the attention of the House to some of the ***new provisions which will help to remedy the weaknesses of the existing Ordinance***, and to the ***additional powers which are to be given to the Director of Corrupt Practices Investigation Bureau [the "Bureau"] and***

> ***his senior staff*** in order to help the Bureau to carry out its primary objects, namely, the prevention and detection of corruption and the prosecution of offenders, if corruption is committed.
>
> [emphasis added]

40 In essence, the 1960 Ordinance was intended to expand the limited scope of the 1937 Ordinance by conferring additional powers to the Bureau (see ss 15, 17–20, 22, 25 and 27) and enacting new provisions to strengthen the 1937 Ordinance. In particular, the definitional provision was also amended in line with the above changes. As stated in the explanatory statement to the bill of the 1960 Ordinance (the "Explanatory Statement"):

> The Bill introduces a definition of the word "agent" intended to make the presumption provided by clause 8 applicable to sub-contractors and their employees in cases where they may not be acting for persons holding a contract with the Government, and a new definition of the word "gratification" (Clause 2).

41 However, the Explanatory Statement is silent on the amendment to the definition of "public body". In fact, the Explanatory Statement specifically states that "[a] number of provisions in the Federation of Malaya's Prevention of Corruption Ordinance, 1950, have been incorporated". But as Woo J noted in *Tey Tsun Hang (HC)* (at [11]), the phrase used in the Federation of Malaya's Prevention of Corruption Ordinance 1950 (Ordinance No 5 of 1950) (Malaya) was "undertakings *of* public utility". The 1960 Parliamentary Debates and the *Report of the Select Committee on the Prevention of Corruption Bill (Bill No 63/1960)* (Sessional Paper No. L.A. 8 of 1960, 23 March 1960) also make no mention of the definition of "public body", let alone allude to the reason for the change. The lack of any such mention further suggests that the change was a typographical error.

42 For the above reasons, we agreed that a rectifying construction should be applied to interpret the phrase in Limb 1 as "undertakings *of* public utility".

(2) The meaning of "public utility"

43 The parties disputed the meaning of the phrase "public utility". The respondent proposed a broad interpretation as adopted in *Tey Tsun Hang (DC)*. There, Chief District Judge Tan Siong Thye (as he then was) cited with approval (*Tey Tsun Hang (DC)* at [522]) the following definition from *Words and Phrases: Legally Defined* (London, Butterworths, Third Edition, Volume 3: K-Q): the literal meaning of "utility" is "usefulness", "but it is commonly used to refer to a corporation that performs a public service and so is a public utility". Ms Ng similarly submitted that "public utility" refers to "the provision of essential services to the public, as a matter of the public good". Both the respondent and Ms Ng argued that the provision of tertiary education was clearly an undertaking of public utility.

44 On the other hand, the appellant advanced a narrower reading which confines "public utility" to "essential services only (such as water, sewage, public transport, electricity)". According to the appellant, the two requirements of "public utility" are that it must be "essential" and "accommodates the public for which there is entitlement as a matter of right". This was based on the definition in *Black's Law Dictionary* (Bryan Garner gen ed) (Thomson Reuters, 10th Ed, 2014) ("*Black's Law Dictionary (10th Ed)*"), which defines "public utility" as "[a] company that provides necessary services to the public, such as telephone lines and service, electricity, and water", usually operating as monopolies; alternatively, "[a] person, corporation or other association that carries on an enterprise for the accommodation of the public, the members of which are entitled as a matter of right to use the enterprise's facilities" (*Black's Law Dictionary (10th Ed)* at p 1780; see also *Black's Law Dictionary* (Bryan Garner gen ed) (Thomson Reuters, 12th Ed, 2024) ("*Black's Law Dictionary*") at p 1866).

45 We rejected the appellant's interpretation. The words "public utility" should be accorded the breadth with which they are expressed and should encompass the public provision of services that benefit the public and serve the public interest. This interpretation would include the provision of tertiary education, bearing in mind the legislative purpose of the PCA, which is to address corruption with particular emphasis on the public sector. This, too, was the conclusion reached by Woo J in *Tey Tsun Hang (HC)* at [208].

46 The PCA is intended to expand the anti-corruption measures provided under its predecessor statutes and to target corruption in the public sector. As stated in the long title, the PCA is an act "to provide for the more effectual prevention of corruption". This is also evident from the 1960 Parliamentary Debates and the new provisions enacted in the 1960 Ordinance to combat corruption more effectively (see [40] above). Further, the parties agreed that the key mischief targeted is public sector corruption, as supported by various provisions of the PCA including ss 7, 8, 10, 12, 20 and 21.

47 Given the above, it was clear that the interpretation proposed by the respondent and Ms Ng would further the legislative purpose of the PCA (*Tan Cheng Bock* at [54(c)]). In short, an "undertaking of public utility" should be read broadly to refer to the public provision of services in the public's interest. This would include the provision of services which are of "usefulness" to the public – such as public housing, public transport, and importantly for present purposes, public tertiary education.

Application to the facts

48 With the above principles in mind, we turn to the application of Limb 1 to the facts. We held that SMU is a "public body", as it has the "power to act

under and for the purposes of" the SMU Act, which is a "written law relating to … undertakings [of] public utility", *ie*, tertiary education.

(1) SMU Act is a "written law relating to … undertakings of public utility"

49 The long title of the SMU Act states that it is "[a]n Act to provide for certain matters relating to the operation of a university known as the Singapore Management University". Section 3 of the SMU Act sets out the function of SMU, which is, "in particular, to confer and award degrees, diplomas and certificates, including honorary degrees and other distinctions". It is clear that the SMU Act is a written law relating to the provision of public tertiary education. We have concluded above that the provision of public tertiary education is an undertaking of public utility.

(2) SMU has the "power to act under" the SMU Act

50 As noted above (at [31(a)]), the "power to act under" a written law may be conferred on the public body expressly or impliedly. The implied conferment of the power to act is relevant to the present case because the SMU Act only conferred on SMU a statutory *function* under s 3. We reproduce s 3 in full below:

> **Function of university company**
>
> **3.** The function of the university company is to pursue, within the limits of the financial resources available to it, the objects provided by its constituent documents and, in particular, to confer and award degrees, diplomas and certificates, including honorary degrees and other distinctions.

51 The appellant emphasised that s 3 above (as well as other provisions of the SMU Act) are silent on SMU's *powers*. SMU's powers are instead stated in the "constituent documents", defined in s 2 of the SMU Act as the memorandum of association and articles of association (*ie*, the M&AA). The M&AA expressly

sets out SMU's powers to, for instance, "engage in activities relating to teaching and research" and "appoint, employ, remove or suspend" the staff.

52 Following from the above, we directed the parties to address us on the issue of whether the conferment of a statutory function upon a body carries with it the conferment of powers necessary to discharge that function. Both parties and Ms Ng identified the same cases which were said to have answered this question in the affirmative. Principally, reference was made to *Ang Pek San Lawrence v Singapore Medical Council* [2015] 2 SLR 1179 ("*Lawrence Ang*"), which cited *The Attorney-General & Ephraim Hutchings (Relator) v The Directors of the Great Eastern Railway Company* (1880) 5 App Cas 473 ("*Great Eastern Railway*").

53 In our view, these cases concerned the implication of *ancillary* powers and did not directly suggest that primary powers necessary to discharge a statutory function come with the conferment of that function. Nevertheless, if powers ancillary and incidental to an entity's function may be implied as a matter of statutory interpretation, then it must follow that powers necessary to carry out the statutory function may also be implied to give effect to Parliament's intent. Further, we noted that the word "function" itself may be interpreted to encompass powers necessary to fulfil the entity's key purpose.

54 Both *Lawrence Ang* and *Great Eastern Railway* stand for the proposition that a power that is *incidental* or *ancillary* to the "main purpose" or "those things which the Legislature has authori[s]ed" may be validly implied. Indeed, as Lord Templeman observed in *Hazell v Hammersmith and Fulham London Borough Council and Others* [1992] 2 AC 1 ("*Hazell*") at 28–29, the principle in *Great Eastern Railway* is embodied in s 111 of the Local Government Act 1972 (c 70) (UK) (the "LGA") which is titled "*Subsidiary* powers of local authorities" and

provides that "a local authority shall have power to do anything … which is calculated to *facilitate*, or is *conducive* or *incidental* to, the discharge of any of their functions" [emphasis added]. Even more on point is Edwards-Stuart J's remark in *Patrick Egan v Basildon Borough Council* [2011] EWHC 2416 (QB) ("*Patrick Egan*") that s 111 of the LGA is "based on the premise that the [acts] in question are not, if they were to be carried out in isolation from the exercise of the relevant power, authorised by that power"; it would otherwise be unnecessary to rely on s 111 if the relevant acts can already be carried out under the "primary power" (*Patrick Egan* at [34]–[36]).

55 The issue in the present case was whether the conferment of a statutory function on a body – without expressly conferring any powers – implied the conferment of the "primary powers" necessary for the discharge of such function. In our view, *Lawrence Ang* and *Great Eastern Railway* were still relevant in that, if powers ancillary and incidental to the main purpose may be implied as a matter of statutory construction, then it ought to follow that powers necessary to carry out the main purpose may also be implied to give effect to Parliament's intent.

56 Further, on a purposive interpretation of the word "function", it may be read to encompass all powers reasonably necessary for carrying out that function. As a matter of statutory interpretation, the Federal Court of Australia noted that the word "function" involves the conferment of a power and/or the creation of a duty, whereby whether a function involves a mere power as opposed to a mandatory duty depends on the proper construction of the relevant legislation as a whole (*Chief Executive Centrelink v Aboriginal Community Benefit Fund Pty Ltd and others* (2016) 151 ALD 434 at [69]). In the context of the word "function" in s 111 of the LGA (see [54] above), Lord Templeman in *Hazell* remarked that the word "embraces all the duties and powers of a local

authority; the sum total of the activities Parliament has entrusted to it" (*Hazell* at 29). Hence, a statutory "function" conferred on the entity may be interpreted to encompass all "powers" (and corresponding duties) required to fulfil the entity's key purpose.

57 Applying the principles discussed above, the "function" conferred upon SMU under s 3 of the SMU Act (see [50] above) encompasses all powers reasonably necessary for pursuing the objects stated in the M&AA. Alternatively, such powers necessary to discharge its statutory function may be implied by adapting the proposition in *Lawrence Ang*. Beyond those necessary powers, powers which are incidental or ancillary to SMU's statutory function may be implied based on *Lawrence Ang*.

58 It was also pertinent to consider s 6 of the SMU Act. In particular, s 6(2) provides that all moneys paid by the Minister of Education (the "Minister") to SMU "may only be applied or expended by [SMU] for such objects provided by its constituent documents as the Minister may allow". Although this provision regulates how SMU may use the funds received from the Minister (by virtue of the word "only"), in our view, it also encompasses the *power* to expend those funds for the purposes provided by the M&AA. In any event, s 3 of the SMU Act states that SMU's function is to pursue its objects "within the limits of the financial resources available to it". Such function necessarily implies or encompasses SMU's power to use available funds to pursue its objects. As the respondent submitted, s 6(2) of the SMU Act "confirms the existence of SMU's power to expend public funds" (as implicitly conferred upon SMU under s 3), while ensuring SMU's accountability through statutory control.

59 We turn to address the appellant's argument that the principles discussed in the authorities mentioned above were inapplicable here because powers can only be implied *if they are not found anywhere*, such that implication is "necessary". Here, such implication was said to be unnecessary because the powers required for SMU to discharge its statutory function are already set out in the M&AA. As Ms Ng submitted, however, the relevant authorities did not stand for such a proposition advanced by the appellant. We agreed with Ms Ng's submission. We would add that those authorities did not have to consider such a proposition, as they did not concern a situation like the present where there is another legal document (other than the statute), which a party contends is the sole and ultimate source of a body's power.

60 We accepted the respondent's submission that the SMU Act is the "base source" of SMU's powers under the M&AA and ultimately determines their validity. This was supported by the following:

(a) As stated in the Hansard record, one of the four functions of the SMU Act is to "give SMU the right to confer and award degrees, diplomas and certificates, including honorary degrees and other distinctions" (*Singapore Parliamentary Debates, Official Report* (21 February 2000) vol 71 ("2000 Parliamentary Debates") at col 865). As the respondent emphasised, this phrasing is reflected in cl 4(ii) of the M&AA and reproduced in s 3 of the SMU Act. The SMU Act thus affirms and validates the pre-existing powers set out in the M&AA, including, and "in particular", the power to grant academic qualifications. On that note, it is irrelevant that the M&AA predates the SMU Act. The M&AA was the primary source of SMU's powers prior to the SMU Act. However, upon the enactment of the SMU Act, the SMU Act has become the principal legal document.

(b) The M&AA is ultimately *subject to* the provisions of the SMU Act. For instance, s 5(1)(*d*) of the SMU Act requires any amendment to the M&AA to be approved by the Minister, and s 9(1) provides that the M&AA is void to the extent of any inconsistency with the SMU Act.

(c) Going beyond the express powers in the M&AA, the powers ancillary and incidental to the discharge of SMU's statutory function, even if silent in the M&AA, may be implied pursuant to the SMU Act based on the principle in *Lawrence Ang*.

61 Given the above, it is clear that the SMU Act – not the M&AA – is the governing document and the ultimate source of SMU's powers.

(3) SMU has the "power to act … for the purposes of" the SMU Act

62 The purpose of the SMU Act is to grant SMU flexibility and autonomy in the provision of higher education, while subjecting it to appropriate government oversight to ensure accountability, especially over the substantial public funds it would receive (2000 Parliamentary Debates at cols 864–865):

> *Approach of the SMU Bill*
>
> … There will be a two-tier approach. ***SMU's daily operations are governed by the Memorandum and Articles of Association*** (M&A) of the company which was incorporated on 12th January this year. The company called The Singapore Management University is also subject to the provisions of the Companies Act. This gives SMU ***as much operational autonomy as possible to innovate and to pursue excellence***.
>
> At the higher level, SMU's activities will be governed by the SMU Bill. This is necessary ***because of the wider national role played by SMU as an institution of higher learning in Singapore, and the fact that SMU will receive significant public funding***. The SMU Bill will therefore provide ***the necessary mechanisms for the Government to guide SMU's strategic development in the public interest, and safeguard the use of public funds***.

> Because of this two-tier approach and the desire to ***give SMU maximum flexibility***, the SMU Bill is a minimalist and relatively short Bill.
>
> [emphasis added]

63 Having concluded that SMU has the "power to act under" the SMU Act, it may be assumed that such empowerment is "for the purposes of" the SMU Act (see [31(b)] above). Indeed, the provisions of the SMU Act also clearly suggest that SMU is empowered to act in furtherance of the objectives of the statute. Consistent with the legislative purpose of granting SMU "maximum flexibility" to pursue its objects, s 3 of the SMU Act gives statutory recognition to "the objects provided by [SMU's] constituent documents" and leaves the daily operations to be addressed in the M&AA. At the same time, in furtherance of the objective of ensuring public accountability, the SMU Act establishes government oversight over SMU's performance, governance, funding and financial accountability in the following ways:

(a) SMU is required to comply with the accountability framework agreed with the Minister and to evaluate its performance based on the quality assurance framework set by the Minister (see s 3A). SMU must also comply with the directions of the Minister to implement policies on higher education (see s 3B).

(b) The Minister has the power to remove or replace any trustee or appoint new or additional trustees to SMU's board of trustees (see s 4). SMU must also obtain the Minister's consent prior to taking certain key actions, such as making amendments to the M&AA (see s 5).

(c) On funding, s 6 provides that the funds provided by the Minister must be used only "for such objects provided by its constituent documents as the Minister may allow". On a related note, s 7 gives the

> Minister oversight over SMU's financial matters. For instance, the Minister is entitled to access all records relating to SMU's financial transactions (see s 7(1)), and SMU must make available to the public a summary of its financial statements in a manner and at a frequency determined by the Minister (see s 7(3)).

64 For the above reasons, we concluded that SMU satisfies Limb 1 of the definition of "public body". It has the power to act under and for the purposes of a written law relating to an undertaking of public utility.

Whether SMU is a "public body" under Limb 2

65 A "public body" under Limb 2 must have the "power … otherwise to administer money levied or raised by rates or charges in pursuance of any written law". We start by addressing the two possible permutations of this limb, followed by the key issue of the meaning of the phrase "money levied or raised by rates or charges".

Permutations 1 and 2

66 Based on the three-stage framework for statutory interpretation in *Tan Cheng Bock*, the first step is to ascertain the possible interpretations of the provision (*Tan Cheng Bock* at [54(b)]). There are at least two ways to parse this limb:

Permutation 1	A body which has power to administer money (levied or raised by rates or charges in pursuance of any written law).
Permutation 2	A body which has power to administer money (levied or raised by rates or charges) in pursuance of any written law.

67 In essence, the question was whether the phrase "in pursuance of any written law" refers to the power to administer or to the levying or raising of rates or charges. The appellant initially submitted that Permutation 1 should be adopted, whereas the respondent and Ms Ng submitted that Permutation 2 was the correct reading. However, the appellant accepted in his oral submissions before us that Permutation 2 should be adopted instead.

68 Permutation 2 was indeed the preferred interpretation. It is self-evident that "rates or charges" will invariably be levied or raised pursuant to written law. In fact, the appellant's own submission before the DJ was that the levying or raising of rates or charges must obviously be in pursuance of a written law. It followed that the words "in pursuance of any written law" would be redundant and unnecessary if they were to relate to the words "money levied or raised by rates or charges". As Parliament shuns tautology and does not legislate in vain (*Tan Cheng Bock* at [38]), Permutation 1 should be rejected.

69 Having rejected Permutation 1, it followed that the phrase "in pursuance of any written law" could relate only to the "power … to administer" money. Such a construction was also supported by a purposive reading. Permutation 2 sensibly limits the scope of Limb 2 by requiring the entity to be *statutorily* empowered to administer money levied or raised by rates or charges. This also results in an internally coherent reading of the definition of "public body". As Limb 1 refers to the "power to act under … any written law", Limb 2 should

also be read consistently to refer to "power … to administer" money "in pursuance of any written law".

The ordinary meaning of "rates or charges"

70 We next turn to the interpretation of specific words and phrases. It is uncontroversial that the word "administer" means to control or manage (see also *Black's Law Dictionary* at p 53). As alluded to above, what was controversial is the interpretation of the phrase "money levied or raised by rates or charges". The appellant contended that this phrase does not encompass all types of government revenue or funds such as "generic tax". Similarly, Ms Ng argued that the phrase refers to "levies", "rates" or "charges" as stated in the relevant statutes, not just any public funds. Examples included: "rates, charges and fees" prescribed under the Maritime and Port Authority of Singapore Act 1996 (2020 Rev Ed) (the "MPAA") for use of services and facilities provided; and air development levy payable in respect of every air passenger ticket, as well as "fees and charges for air navigation services and other facilities and services" imposed by the Civil Aviation Authority under ss 86 to 88 of the Civil Aviation Authority of Singapore Act 2009 (2020 Rev Ed). The respondent, on the other hand, submitted for a broader reading – specifically, "public money derived from income taxes, *etc*". This broader interpretation was also adopted in *Tey Tsun Hang (DC)*, where it was held that NUS satisfied the definition in Limb 2 as it was empowered to administer public money (*Tey Tsun Hang (DC)* at [525]–[527]).

71 We start with the plain meaning of the word "rates". As stated in the law dictionaries that the parties referred to, "rates" refer to tax or contribution levied by a local authority for a public purpose upon, as a general rule, the occupiers of property within an area (see J.S.S. Wharton, *Wharton's Law Lexicon* (Stevens

& Sons and Sweet & Maxwell, 14th Ed, 1949) ("*Wharton's Law Lexicon*") at p 839; *A Concise Dictionary of Law* (Elizabeth A. Martin ed) (Oxford University Press, 1983) at pp 297–298; *Words, Phrases & Maxims Legally & Judicially Defined* (Anandan Krishnan ed) (LexisNexis, 2008) ("*Words, Phrases & Maxims*") at p 11; and *Stroud's Judicial Dictionary of Words and Phrases* (Daniel Greenberg ed) (Sweet & Maxwell, 8th Ed, 2012) at pp 2430–2431).

72 The historical context behind "rates" is helpfully summarised in *Jowitt's Dictionary of English Law* (Sweet & Maxwell, 3rd Ed, 2010) ("*Jowitt's Dictionary*") at pp 1890–1891 as follows:

(a) A "rate" was "[f]ormerly a sum assessed or made payable by a body having local jurisdiction over the district in which the person on whom the rate was assessed dwelt or had property".

(b) The oldest rate was the poor rate levied under the Poor Relief Act 1601 on the occupiers in each parish of lands, houses, tithes, coal mines, or saleable underwoods.

(c) The Rating Act 1874 then extended the liability to, amongst others, land used for a plantation or a wood, and mines of every kind not mentioned in the Poor Relief Act 1601.

(d) Subsequently, the Rating and Valuation Act 1925 imposed a general rate that replaced almost all the rates formerly imposed by the respective authorities. As Ms Ng pointed out, this consolidation was necessary because the expansion of local services and the increase in the number of local authorities gave rise to numerous and disparate types of rates which were difficult to keep track – ranging from education rates,

sanitary service rates, library rates, to lighting and watching rates (*UK Parliamentary Debates, Official Report* (13 May 1925) vol 183 at col 1866-925).

(e) The law was consolidated by the General Rate Act 1967, and subsequently amended, until repealed by the Local Government Finance Act 1988.

To complete the picture, the Local Government Finance Act 1988 replaced rates with (a) community charges for individuals, and (b) business rates for businesses. Due to a huge backlash, however, they were repealed by the Local Government Finance Act 1992 which introduced a new "council tax" (also a property-based tax) for local government financing.

73 As for the word "charges", the appellant pointed out that aside from the technical meaning in the context of security (which is irrelevant here), the word does not have a specific definition. It is defined in legal dictionaries in broad terms, referring generally to costs and expenses. For instance, *Black's Law Dictionary* defines it as "[p]rice, cost, or expense" (at p 291; see also *Jowitt's Dictionary* at p 374; *Wharton's Law Lexicon* at p 838; and L B Curzon, *Dictionary of Law* (Pitman Publishing, 4th Ed, 1993) at p 58). A longer definition stated in *Words, Phrases & Maxims* is "the price required or demanded for services rendered or less frequently for goods supplied". It also notes that the word "charge" is "a word of very general and varied use" (at p 282).

74 On a plain reading, the word "rates" is a historical term of art for local property taxes, whereas the word "charges" has no technical meaning and refers to fees imposed, generally in return for goods and services rendered. However,

it was not immediately apparent how the legislative purpose of combatting corruption "especially in the public services" (see 1960 Parliamentary Debates at col 376), is adequately fulfilled by limiting "public bodies" under Limb 2 to entities statutorily empowered to administer such limited and specific sources of public revenue.

75 As noted above, another possible reading suggested by the respondent was that "money levied or raised by rates or charges" refers to public funds in general. This broader interpretation arguably better advanced the legislative purpose of combatting public sector corruption, but it did not sit well with the natural meaning of the specific words "rates or charges". Given these competing interpretations, the ordinary meaning of "money levied or raised by rates or charges" remained ambiguous. We thus turned to the extraneous materials relating to the 1937 Ordinance and the 1960 Ordinance to ascertain the meaning of this material phrase (*Tan Cheng Bock* at [54(c)(iii)]).

The meaning of "money levied or raised by rates or charges" under the 1937 Ordinance

76 As noted above, the 1937 Ordinance is relevant because the PCA can be traced back to this ordinance. It also contains the phrase "money levied or raised by rates or charges". To shed light on the meaning of this phrase, the respondent referred us to the Straits Settlements Blue Book for the Year 1937 (the "Blue Book"). This is a record of key statistical data of the Straits Settlements, which included Singapore, Malacca and Penang. It contains, amongst other data, a schedule of taxes, duties, fees and all other sources of revenue, net revenue and expenditure, local revenue and population. As the appellant accepted, the Blue Book is a reliable source of extrinsic material, providing a helpful reference point for the vocabulary used in the 1937 Ordinance.

77 Of particular relevance was Section 7 of the Blue Book, titled "Municipalities and Other Local Bodies". It sets out in a table the revenues derived by the municipalities and local bodies which were established to manage localised and/or specific matters. In particular, the column headed "Sources of Revenue" states as follows: "If rates, state amount, and on what class of property (movable or immovable)". This suggested that "rates" in the 1937 Straits Settlements context referred to taxes imposed on movable and immovable property, supporting the appellant's point that "rates" in the 1937 Ordinance referred to property-based taxes. Based on the Blue Book (at pp 224–226), most of the local bodies – the Municipal Commissioners of the Town of Singapore (the "Municipal Commissioners of Singapore"), the Municipal Commissioners of George Town Penang, and all the Rural Boards – levied rates on "immovable property" pursuant to the Municipal Ordinance (SS Cap 133, 1936 Rev Ed).

78 The respondent, on the other hand, submitted that "rates" had a broader meaning in that they were used interchangeably with "tax". To illustrate this point, the respondent referred to s 31 of the Railways Ordinance (Cap 107, 1936 Rev Ed) (the "Railways Ordinance") titled "Taxation of railway by local authorities". This provision pertained to "the levy of rates in respect of the railway and from the railway administration in aid of the funds of local authorities". The word "railway" was in turn defined as "a railway or any portion of a railway for the public carriage of passengers, animals or goods", and included various physical assets and infrastructure associated with the operation of the railway (see s 2). Such "rates" were to be paid by the railway administration to the "Municipal Commissioners or to any other local authority" (see s 31). However, the example of railway rates did not support the respondent's case that "rates" referred generally to all forms of taxes. As the

appellant rightly pointed out, the "rates" levied under the Railways Ordinance were *also* property taxes paid to the local authorities.

79 Nevertheless, there were other materials in support of the respondent's point that "rates" were not limited to localised property taxes even back in 1937. For instance, the Singapore Harbour Board derived its revenue from levying "[r]ates and charges" as set out in ss 46 to 50 of the Ports Ordinance (SS Cap 149, 1936 Rev Ed) (the "Ports Ordinance") (see the Blue Book at p 228). To summarise, s 46 provided that the Singapore Harbour Board may levy, "in accordance with a scale which it shall frame", "rates" on the use of physical spaces in the port (*eg*, wharf, dock, pier and building). Section 47 further provided that the Singapore Harbour Board may levy, "in accordance with a scale which it shall frame", "rates" on services, utilities and equipment provided (*eg*, towing, firefighting and water supply). As such, the word "rates", at least in the context of the Ports Ordinance, referred to standardised fixed-scale levies set by the Singapore Harbour Board for services and facilities provided. Tying this back to the 1937 Ordinance, the word "rates" could be read more widely to include sums levied on a fixed scale by local bodies as authorised under the relevant ordinances.

80 Turning to the word "charges", both parties rightly observed that this word appeared for the first time in the 1937 Ordinance. The definition of "public body" under the UK legislations which the 1937 Ordinance was modelled after, did not include this word. Specifically, s 7 of the Public Bodies Corrupt Practices Act 1889 (c 69) (UK) defined a "public body" as:

> … any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, or the public health, or to poor law or ***otherwise to administer money raised by rates in pursuance of any public general***

> ***Act***, but does not include any public body as above defined existing elsewhere than in the United Kingdom [emphasis added]

The above definition was expanded by s 2 of the Prevention of Corruption Act 1916 (c 64) (UK) to include "in addition to the bodies mentioned [above], local and public authorities of all descriptions". But it still makes no mention of money levied or raised by "charges".

81 Unlike Limb 2, the UK definition only refers to "… body which has power … otherwise to administer money raised by rates in pursuance of any public general Act". Such "money raised by rates", as discussed above, had a specific meaning in the context of English local authorities. The legislative materials on the 1937 Ordinance are silent as to why the word "charges" was added. It may be surmised from the broad ordinary meaning of "charges" (see [73] above), as well as the sources of local revenue reflected in the Blue Book, that the 1937 Ordinance amended the UK definition to capture various sources of local revenue which went beyond "rates". This would include "[w]ater charges", "[v]eterinary charges" and "[c]onservancy charges" collected by the Municipality of the Town and Fort of Malacca (see the Blue Book at p 224). Another example would be "charges" imposed by the Singapore Harbour Board for landing, shipping and transhipping of goods or persons, and "charges" imposed for "any services rendered or goods supplied by it … and in respect of which no scale of rates has been framed" (see ss 49 and 50 of the Ports Ordinance). Other fees which were not labelled as "charges" but were collected by the municipalities and local bodies under the relevant ordinances, would also have amounted to "charges" under the 1937 Ordinance – *eg*, "… Licenses, Fees, Rents, Supply of Water, Gas, Electricity" collected by the Municipal Commissioners of Singapore and various forms of "School Fees" collected by the Education Board (see the Blue Book at pp 224 and 226).

82 The consolidated materials suggest that the word "charges" was introduced in Limb 2 of the 1937 Ordinance to ensure a comprehensive coverage of all forms of *public local funds collected by the municipalities and local bodies* for public purposes and/or for goods and services rendered to the public. Specifically, these were "rates" imposed on movable or immovable property (see [77]–[78] above), "rates" imposed under specific ordinances (*eg*, the Ports Ordinance) (see [79]), and "charges" for certain goods and services (*eg*, fees and licenses) (see [81]). We thus agreed with the appellant and Ms Ng that the phrase "rates or charges" historically did not refer to all forms of government revenue or public funds in general.

83 We rejected the respondent's argument that the phrase "rates or charges" encompassed public funds derived by the central Straits Settlements government. Such funds are set out in Section 1 of the Blue Book titled "Taxes, Duties, Fees and all other Sources of Revenue". They include port and harbour dues, licenses, excise, fines, court fees, rents on government property, interests, and posts and telegraphs (see the Blue Book at p 86). In our view, it is relevant that the 1937 Ordinance did not use an all-encompassing phrase such as "public funds" or "government revenue", or a more comprehensive phrase that includes "taxes, duties, or excise" – which are vocabularies that existed in 1937 (as evident from Section 1 of the Blue Book) – in addition to "rates or charges". With this in mind, the preferred interpretation was that the phrase "rates or charges" in the 1937 Ordinance referred to specific categories of statutory revenues raised by the municipalities and local bodies, as reflected in Section 7 of the Blue Book.

84 We also rejected the respondent's submission that "Government Contribution", which is listed as one of the sources of revenue in Section 7 of the Blue Book, amounted to "money levied or raised by rates or charges". The

natural meaning of the phrase, as discussed above, is not broad enough to refer to all forms of government revenue. In fact, government contribution was listed as a distinct source of revenue from "rates or charges". As the appellant pointed out as an example, the breakdown of the Education Board's revenue in the Blue Book (at p 226) reflects (a) education "rate", (b) various fees amounting to "charges", and (c) government contribution – all as separate categories.

85 We therefore agreed with the appellant and Ms Ng that "rates or charges" did not refer to all forms of public funds in the 1937 Ordinance. Instead, the phrase had a specific historical meaning, referring to local public funds administered by the municipalities and local bodies.

The meaning of "money levied or raised by rates or charges" under the 1960 Ordinance and the PCA

86 We now turn to the 1960 Ordinance. Both parties and Ms Ng focused exclusively on the 1937 Ordinance to advance their submissions on the proper interpretation of the phrase "rates or charges". However, the 1960 Ordinance was the key legislation, as it is the direct predecessor of the PCA. Applying the principle of rectifying construction, we agreed with the respondent's conclusion that the phrase "money levied or raised by rates or charges" should be read as public funds under the 1960 Ordinance and the PCA.

(1) The new fiscal developments in 1960

87 The 1960 Ordinance was enacted at the time when various changes were being made to Singapore's fiscal structure. As such, it would be helpful to set out some of the key changes to provide context to better comprehend the Legislative Assembly's intent in enacting the 1960 Ordinance.

(a) First, Singapore was no longer a municipality in 1960. In 1951, Singapore was formally proclaimed a city, and the Municipal Commission of Singapore was renamed as the "City Council". Under the Local Government Ordinance (SS Ord No 24 of 1957), the administration of the city was placed under the responsibility of the City Council. Subsequently in 1958, Singapore achieved self-governance. The City Council (Suspension and Transfer of Functions) Ordinance (SS Ord No 40 of 1959) suspended the City Council and transferred its functions to the Minister for National Development, including the City Council's "powers to levy rates and to charge fees". Shortly after the 1960 Ordinance was enacted, the revenue and the expenditure of the City Council were integrated with those of the government under the Local Government (Financial Integration) Ordinance (SS Ord No 64 of 1960). In essence, Singapore was moving towards centralisation of government revenue.

(b) Relatedly, the Consolidated Fund was established in 1958. As required under s 95 of the Singapore (Constitution) Order in Council (SS Ord No 1956 of 1958), "all revenues of Singapore not allocated to specific purposes by any written law" were paid into the Consolidated Fund (see also Art 145 of the Constitution of the Republic of Singapore (2020 Rev Ed)). The moneys in the Consolidated Fund were then distributed to various bodies to cover public expenditure. Hence, unlike in the Straits Settlements context when there were two separate fiscal sources (those administered by the local bodies and those administered by the central Straits Settlements government), public funds were being centralised and put into the Consolidated Fund by default in 1960.

(c) Further, the Property Tax Ordinance 1960 (No 72 of 1960) was introduced "to provide for the levy of a tax on immovable properties in lieu of the rates previously leviable by local authorities and to regulate the collection thereof". In short, "rates" were replaced by "property tax". Significantly, such property tax was to go into the Consolidated Fund, unlike in the past when "rates" were collected directly by the Municipal Commissioners. Although this ordinance was passed a few months after the 1960 Ordinance, it should have been obvious to the Legislative Assembly that the term "rates" was an obsolescent concept. Another example is the Education and Improvement Rates (Abolition) Ordinance (SS Ord No 8 of 1961) which abolished the "Education and Improvement Rates leviable by local authorities".

(d) Finally, even prior to the introduction of property tax and the Consolidated Fund, personal income tax was established under the Income Tax Ordinance (No 39 of 1947). It is a significant source of public revenue which would not fall within the meaning of "rates or charges" under the 1937 Ordinance.

88 To summarise, by 1960, there were no longer municipalities and local bodies administering "rates or charges" for localised purposes. Personal income tax was introduced, education and improvement rates were abolished, and rates in the sense of local property taxation were replaced by "property tax" that went into the Consolidated Fund.

89 At this juncture, we address the appellant's point that there are still bodies under modern legislation which are empowered to administer "rates or charges". For instance, the Town Council is empowered to impose "conservancy and service charges" to carry out its statutory duties and functions

under s 53(1) of the Town Councils Act 1988 (2020 Rev Ed). Another example is the Urban Redevelopment Authority which may levy "charges or fees" pursuant to the Second Schedule of the Urban Redevelopment Authority Act 1989 (2020 Rev Ed) "for the provision of accommodation, services or works, or the use of buildings, recreational grounds, equipment, amenities or facilities provided, maintained, controlled or operated by" it. Although the appellant had given examples of bodies empowered to administer "charges", he did not explain what it means to administer "rates" in the modern context or give an example of a body which is empowered to administer "rates". In the appellant's own words, the term "rates" was "obsolete". A rare instance where the term "rates" is used in modern legislation is s 27 of the MPAA cited by Ms Ng (see [70] above), providing for the levying of "rates … for the use of services and facilities provided".

90 In our view, considering the new developments in 1960 and the legislative purpose of the 1960 Ordinance to combat corruption more effectively (with an emphasis on public sector corruption), the Legislative Assembly could not have intended to limit the scope of Limb 2 to only a few entities that are empowered to administer "money levied or raised by rates or charges". At the same time, we did not accept the respondent's submission that the words "rates or charges" describe money "raised *for public purposes* as opposed to private purposes, regardless of the specific manner in which the moneys are levied or raised (be it through rates or charges)" [emphasis in original]. We were not persuaded that this Court could simply read the phrase "money levied or raised by rates or charges" as "public funds" on the basis that the Legislative Assembly must have retained those words to describe the public purpose of the money levied or raised. There was insufficient support for the respondent's submission.

91 We also rejected the respondent's submission that the Net Investment Returns Contribution ("NIRC")) fell under the phrase "money levied or raised by rates or charges". In our view, the words "rates or charges" imply revenue that is obtained *from the public* through compulsory impositions or fees received for certain services (*eg*, water, gas, harbour usage, *etc*). Investment returns and income derived from the reserves are not revenues *sourced from the public* under statutory authority. Instead, NIRC amounts to revenue generated through state capital. We agreed with Ms Ng that the meaning of the phrase "money levied or raised by rates or charges" would be strained if NIRC were included on the ground that "government assets are constituted at least in part by moneys levied or raised by rates or charges", as the respondent submitted. In fact, as NIRC was introduced only in 2001, this source of revenue could not have been within the contemplation of the Legislative Assembly.

92 In any event, we agreed with the respondent that there was a principled basis for reading the material phrase as public funds in general. Specifically, the principle of rectifying construction was applicable.

(2) The principle of rectifying construction

93 The three requirements of rectifying construction in *Nam Hong* (see [35] above) were satisfied. It was possible to determine from a consideration of the provisions of the PCA read as a whole what the mischief was that Parliament sought to remedy with the statute. It was undisputed that the key mischief targeted by the PCA is corruption in the public sector. This is clear from the various provisions of the PCA identified above (at [46]). As the appellant submitted, the definition of "public body" in s 2 serves to identify the categories of bodies which are subject to greater stringency under the PCA – see *eg*, the

rebuttable presumption of corruption under s 8 and enhanced maximum penalties under s 7.

94 We briefly address the appellant's submission that the first requirement of *Nam Hong* must be refined when the relevant provision is a descriptive or definitional provision, such as s 2 of the PCA. According to the appellant, in such situations, the court must also consider whether it is clear what attributes the legislature intended to capture through the descriptive provision. This allegedly prevents a "disconnect" that arises if the first requirement is "framed so broadly" as to examine only the purpose of the statute. We did not accept that it is necessary to refine the first requirement of *Nam Hong*. As will be addressed below, the question of what attributes the legislature intended to capture through the definition arises when applying the third requirement of *Nam Hong*, which requires the court to identify the words the draftsmen would have inserted instead of the current language.

95 Turning to the second requirement of *Nam Hong*, it is apparent that the draftsmen of the 1960 Ordinance had by inadvertence overlooked, and so omitted to deal with, the relevance of the phrase "money levied or raised by rates or charges" to ensure that the purpose of the PCA is achieved.

96 We start with Ms Ng's contrary submission that this requirement is not satisfied. Ms Ng gave two main reasons. Her first point was that the use of the phrase "rates or charges" in the 1937 Ordinance must have been deliberate because other forms of public revenues existed but were not specifically stated in Limb 2. As noted above (at [80]), Limb 2 of the 1937 Ordinance expanded the equivalent limb of the earlier UK corruption legislations, and the phrase "money levied or raised by rates or charges" in the 1937 Ordinance carried a specific historical meaning. However, this was immaterial because the key

question was not whether the material phrase had been used deliberately in the *1937 Ordinance*. Rather, the key question was whether retaining the phrase in the *1960 Ordinance* – which is the direct predecessor to the PCA – was a deliberate and conscious choice by the Legislative Assembly. In short, Ms Ng's point that the Legislative Council did not intend to encompass all sources of public revenue by using the material phrase in the 1937 Ordinance, was not relevant for present purposes.

97 The second point raised by Ms Ng was that there is no compelling evidence of any legislative intention for Limb 2 to capture bodies empowered to administer all forms of public funding. We disagreed. As we concluded above, on a purposive reading, the phrase "money levied or raised by rates or charges" in the 1937 Ordinance referred to local sources of revenue administered by the municipalities and local bodies. However, such sources of revenue were already declining in relevance at the time the 1960 Ordinance had been enacted. As detailed above at [87], Singapore was moving away from the administration of local revenue and towards a centralised fiscal system.

98 Notwithstanding the abovementioned developments, the 1960 Ordinance retained the phrase "money levied or raised by rates or charges". In our view, it is clear that the draftsmen had by inadvertence overlooked the relevance of that phrase in a new fiscal context and so omitted to amend the phrase. The appellant disagreed and contended that the word "Ordinance" in Limb 2 of the 1937 Ordinance was specifically replaced with the phrase "written law", suggesting that the Legislative Assembly made a conscious and deliberate decision to retain Limb 2, save for the antiquated word "Ordinance". We were not convinced by this submission. The change identified by the appellant was an update in terminology. The need to update an outdated terminology is self-evident, compared to having to evaluate the substantive relevance of a phrase in

a changing fiscal context. Moreover, the Explanatory Statement indicates that the sole substantive change made to the definitional provision (*ie*, s 2) was the addition of new definitions for the words "agent" and "gratification" (see [40] above). This further suggested that no attention was drawn to the relevance of the phrase "money levied or raised by rates or charges", and only formalistic amendments were made to the existing definitions in s 2, in addition to including new definitions.

99 Finally, as mentioned above, the respondent had analysed this requirement with reference to the 1937 Ordinance. But this was undermined by the respondent's submission that the Legislative Council in 1937 had inadvertently overlooked bodies which: (a) administered money levied or raised by taxes (*eg*, income tax); and (b) more generally, administered "money levied or raised by public funding" (*eg*, revenue that goes into the Consolidated Fund). As income tax was introduced only in 1947 and the Consolidated Fund only in 1958, the Legislative Council could not have overlooked fiscal mechanisms that did not even exist back then. Hence, while we agreed with the respondent's conclusion that the second requirement of *Nam Hong* is satisfied, this was only so with reference to the 1960 Ordinance and not the 1937 Ordinance. There was no inadvertent oversight in using the phrase "money levied or raised by rates or charges" in Limb 2 of the 1937 Ordinance.

100 We turn to the final requirement of *Nam Hong*. In our view, it is possible to state with certainty what words the Legislative Assembly would have inserted instead. We note that the three requirements in *Nam Hong* were drawn from the earlier Court of Appeal decision of *Kok Chong Weng v Wiener Robert Lorenz* [2009] 2 SLR(R) 709 ("*Kok Chong Weng*"). There, the Court of Appeal approved of the third requirement as reframed in *Inco Europe v First Choice Distribution* [2000] 1 WLR 586 (at 592):

> … the court must be abundantly sure of … the substance of the provision Parliament would have made, ***although not necessarily the precise words Parliament would have used***, had the error in the Bill been noticed [emphasis added].

This broader formulation was said to be "more consonant with the legislative purpose" of s 9A of the Interpretation Act given its broad wording (*Kok Chong Weng* at [57]).

101 Turning back to Limb 2, the substance of the phrase that the Legislative Assembly would have approved of is clear. Here, we return to the appellant's point (at [94] above) that it is relevant to consider what attributes the Legislative Assembly intended a "public body" to have. We agreed with this point, but we did not agree with the appellant that it was impossible to ascertain those characteristics. Given the PCA's emphasis on public sector corruption, the Legislative Assembly must have intended a "public body" in Limb 2 to refer to bodies that are statutorily empowered to administer public funds in general, not a narrow category of local revenue (*ie*, "rates or charges") collected by municipalities and local bodies. These bodies, in any event, were replaced by statutory boards or ministries primarily funded by moneys from the Consolidated Fund. This further meant that it was no longer possible to trace the exact source of funds put into the Consolidated Fund, and for the Prosecution to thus prove that an entity is administering "money levied or raised by rates or charges". Counsel for the appellant candidly accepted that it would be "nearly impossible" for Limb 2 to be fulfilled, but that this practical difficulty should be addressed by Parliament. We disagreed, as the principle of rectifying construction is intended to address precisely the sort of situation presented before us.

102 For completeness, we briefly address the appellant's objection that interpreting the phrase as public funds in general would mean that every

business which receives a payout from the Consolidated Fund – including subsidies and grants – would be a "public body" under Limb 2. This argument had no merit. This gave insufficient regard to the limiting requirement in Limb 2 that we have analysed above (at [69]) *ie*, that the body in question must be *empowered under a written law* to administer public funds.

103 A purposive interpretation may be applied to rectify a flaw in a statutory provision (*Kok Chong Weng* at [61(e)]). We thus relied on the principle of rectifying construction to read the phrase "money levied or raised by rates or charges" in Limb 2 as public funds on a purposive reading.

104 Given the analysis we adopted, it was unnecessary to resort to the principle of updating construction which the respondent had suggested in the alternative. We saw no need to examine the arguments on this point for present purposes.

Application to the facts

105 For the above reasons, we rejected the appellant's arguments and dismissed the appeal against conviction. Applying the above principles to the facts, we concluded that SMU is a "public body" under Limb 2, as it is empowered under the SMU Act to administer public funds:

(a) First, SMU handles "money levied or raised by rates or charges", *ie*, public money. This is clear from s 6(1) of the SMU Act which states that the Minister must pay to SMU "such moneys as Parliament may provide from time to time for the funding of [SMU]". The undisputed evidence from the director of the Higher Education and Skills Finance Branch at the Ministry of Education was that the funds provided to SMU

are "obtained through the annual supply process, and such funds are issued from the Consolidated Fund".

(b) Second, SMU is empowered under s 3 of the SMU Act to "administer" such public funds. By granting SMU a statutory function of fulfilling educational objectives, SMU is also implicitly conferred the powers necessary to discharge that function. Such powers would obviously include the power to manage the public funds it receives. This is also clear from s 6(2) of the SMU Act which provides that all moneys paid by the Minister to SMU "may only be applied or expended by [SMU] for such objects provided by its constituent documents as the Minister may allow". As discussed above at [58], this provision also suggests that SMU has the power to administer public funds for the purposes provided by the M&AA.

The appeal against sentence

106 We now turn to the appeal against sentence. Having found that SMU is a "public body" under the PCA, the enhanced penalty regime under s 7 applied and the applicable sentencing framework was the *Wong Chee Meng* Framework. An appellate court would not ordinarily disturb the sentence imposed by the trial judge, unless, amongst other grounds, the sentence was manifestly excessive or manifestly inadequate, as the case may be (*Haliffie bin Mamat v Public Prosecutor* [2016] 5 SLR 636 ("*Haliffie*") at [71]). A sentence is only manifestly excessive or inadequate if it requires substantial alterations rather than minute corrections to remedy the injustice (*Haliffie* at [72]). For reasons explained below, we consider that the 28-month sentence imposed by the DJ was manifestly excessive, and the sentences for the individual charges ought to be significantly lower.

Parties' submissions

107 The appellant repeated his submissions before the DJ that (a) the offences fell under the "slight" harm and "slight" culpability category; and (b) the appropriate sentence was a fine of $25,000 per charge, adjusted to a cumulative fine of $200,000. However, the appellant accepted that, taking into consideration the 25 stood-down charges under s 390(9) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"), a modest uplift in sentence was justified. He thus submitted that there should be an uplift to $22,500 per proceeded charge, resulting in a cumulative fine of $225,000.

108 In the alternative, the appellant submitted that if this Court were to find that a custodial sentence was warranted, then two weeks' imprisonment per charge should be imposed instead, with two charges running consecutively to result in a global sentence of four weeks' imprisonment. Taking into consideration the stood-down charges, the appellant submitted that there should be an uplift to 2.5 weeks per charge, with the two charges running consecutively to result in a global sentence of five weeks' imprisonment. The appellant also highlighted that he was not in a position to pay a fine of $225,000, given his current financial situation.

109 Finally, the appellant averred that there were two legal issues on sentencing which warranted "close inspection":

> (a) first, in what circumstances should the general principle that a higher quantum of gratification equates to higher culpability be departed from, and whether gratification in the form of a percentage of commissions forms such an exception; and

(b) second, whether a custodial sentence is the norm in corruption offences involving a "public body", notwithstanding that the PCA permits fines to be imposed.

110 The respondent sought to affirm the DJ's findings. After taking the 25 stood-down charges into consideration, an uplift of two to three months' imprisonment per charge would be appropriate, such that the global sentence should be 32 to 34 months' imprisonment.

The Wong Chee Meng framework

111 The following non-exhaustive offence-specific factors are relevant at the first step of the *Wong Chee Meng* framework (*Wong Chee Meng* at [62]):

Offence-specific factors	
Factors going towards harm	Factors going towards culpability
(a) Actual loss caused to principal (b) Benefit to the giver of gratification (c) Type and extent of loss to third parties (d) Public disquiet (e) Offences committed as part of a group or syndicate (f) Involvement of a transnational element	(a) Amount of gratification given or received (b) Degree of planning and premeditation (c) Level of sophistication (d) Duration of offending (e) Extent of the offender's abuse of position and breach of trust (f) Offender's motive in committing the offence

112 Next, the court should consider the offender-specific factors. The following non-exhaustive considerations will be relevant at this stage of the analysis (*Wong Chee Meng* at [79]):

Offender-specific factors

Aggravating factors	Mitigating factors
(a) Offences taken into consideration for sentencing purposes (b) Relevant antecedents (c) Evident lack of remorse	(a) A guilty plea (b) Co-operation with the authorities (c) Actions taken to minimise harm to victims

113 Considering the sentencing range in s 7 of the PCA, which ranges from a fine to an imprisonment term of up to seven years, the following sentencing matrix is appropriate (*Wong Chee Meng* at [84]):

Harm / Culpability	**Slight**	**Moderate**	**Severe**
Low	Fine or up to 1 year's imprisonment	1 to 2 year's imprisonment	2 to 3 years' imprisonment
Medium	1 to 2 year's imprisonment	2 to 3 years' imprisonment	3 to 4.5 years' imprisonment
High	2 to 3 years' imprisonment	3 to 4.5 years' imprisonment	4.5 to 7 years' imprisonment

The above matrix is intended to apply to accused persons who *claim trial*.

A custodial sentence is warranted

114 It is clear that the threshold for a custodial sentence is crossed on the application of the *Wong Chee Meng* Framework. It is well-established that custodial sentences are presumptively the norm where the public service rationale is triggered (*Wong Chee Meng* at [60]). Hence, although s 7 of the PCA provides that an offence may be punishable with only a fine, the sentencing

court must have regard to the public service rationale, which typically results in a custodial sentence (*Wong Chee Meng* at [86]). The appellant failed to raise any arguments to support his above allegation (at [109(b)]) that this Court should scrutinise this general rule further or depart from it.

The case falls within the lower end of the "slight" harm category

115 We now turn to the first step of the *Wong Chee Meng* framework. We disagree with the DJ's characterisation of the present facts as falling within the mid-point of the "slight" harm category. We find that the present case clearly falls within the lower end of the "slight" harm category. We take the following considerations into account.

116 First, it is not clear that SMU and third parties had suffered any tangible or quantifiable loss as a result of the corrupt transactions. As the DJ had found, there was only "potential loss" in that SMU *may* have been able to engage other marketing partners and/or call centre service providers which could offer better services at more competitive prices (GD at [103] and [105]). The DJ had also rightly noted that "it would be difficult to quantify the actual loss to third parties and SMU" (GD at [103]). It is trite that corruption offences which occasion real harm to the agent's principal are considerably more aggravated than those where the principal suffers little or no harm (*Wong Chee Meng* at [64]). There is also no palpable prejudice to SMU as it was still generally satisfied with the services provided under the agreements awarded.

117 Second, the appellant had clearly benefitted from the corrupt arrangements. It was undisputed that the initial engagement under the first Service Agreement (Channel Partner) was entered into *before* the corrupt arrangement (see [7] above). However, it was clear that the gratifications had influenced SMU's subsequent decisions to engage IAM as the call centre

service provider and to renew the Service Agreement (Channel Partner) and the Call Centre Management Agreement twice (see [5]–[6] and [9] above). More specifically, Tan had recommended IAM to his superior, and the latter accepted Tan's recommendations. In that regard, it was common ground that if not for Tan's recommendations, IAM would not have had any business opportunity with SMU Academy. It was also undisputed that IAM was selected as a vendor for one of the roadshows because Tan had advised the appellant on the amount to quote. We hence reject the appellant's submission that there was no evidence of any interventions by Tan in influencing SMU's decision to engage and retain IAM. But overall, we do not consider that the benefits accrued to the appellant took the case beyond the lower end of the "slight" harm category.

118 For completeness, we briefly address two of the appellant's contentions. First, the appellant argued that the DJ had erred in finding that his ignorance as to his legal rights against Tan's duress and extortion was irrelevant (GD at [101]). This argument is without merit. The DJ found that there was no evidence of any threat to harm IAM or the appellant (GD at [115]). It follows that the appellant's alleged ignorance as to his rights on duress and extortion had no bearing on sentencing. Second, the appellant alleged that the DJ had erred in considering the extensions of IAM's contracts with SMU, as well as IAM's earnings, as benefits derived *by the appellant* (instead of IAM). Although IAM is a separate legal personality, the DJ had rightly considered the commercial benefits gained by IAM as benefits accrued to the appellant. The appellant was the sole shareholder-director of IAM. He founded IAM and was managing its operations at the material time. Given his controlling interest and involvement in IAM, it would be artificial to confine the benefits received solely to, as the appellant submitted, salaries and dividends from IAM.

The case falls under the mid-point of the "low" culpability category

119 We do not agree with the DJ that the facts brought this case within the lower end of the "medium" range of culpability. Instead, we find that the appellant's culpability falls within the mid-point of the "low" range of culpability. We considered the following factors:

(a) The appellant was convicted after trial on ten charges.

(b) The total amount of gratification was a sum of $216,522 for the ten charges.

(c) The offences were committed repeatedly over an extended duration.

Based on the above, we consider that the DJ had erred in attaching undue weight to the total amount of gratification paid by the appellant and in finding that the appellant was motivated by greed.

120 First, while the quantum of the bribe is an important sentencing factor reflecting the culpability of both receiver and giver, with larger bribes generally corresponding to greater blameworthiness (*Wong Chee Meng* at [71]), this must be evaluated within the specific factual context of each case. In the present case, although the total gratification of $216,522 was substantial, the circumstances demonstrate that this quantum does not accurately reflect the appellant's culpability. The size of a bribe is an offence-specific factor that goes towards determining culpability, because it reflects the "receiver's greed for monetary gain and the level of influence or advantage sought by the giver" (*Wong Chee Meng* at [70], citing *Public Prosecutor v Ang Seng Thor* [2011] 4 SLR 217 at [46]). However, in the present case, Tan initiated and escalated the corrupt arrangement by informing the appellant that other marketing partners had

agreed to higher cuts, compelling the appellant to increase his payments from 25% to 30% of IAM's monthly earnings if they exceeded $100,000. The appellant had paid the increased bribes demanded by Tan as a means of self-preservation because he needed money, wanted to "advance the business interests of IAM with SMU Academy" and "secure IAM's position" as a marketing partner and call centre management service provider.

121 The appellant had decided the percentage and terms on which an additional cut would be given after Tan sought an increase in his cut after May 2019, to "ensure that IAM continued to be engaged by SMU Academy for business". While this does not detract from the fact that the appellant had committed corruption offences under the PCA, the appellant's motivation was always defensive rather than acquisitive – he paid the bribes to preserve an existing legitimate business relationship rather than to secure an opportunity that he would not have otherwise had. Furthermore, the kickback arrangement between Tan and the appellant was a percentage-based arrangement where the appellant was to pay a fixed percentage of IAM's monthly earnings from SMU Academy to Tan (see [7] above). It was not a sum-based arrangement. In that light and in the context of the present case, the percentage-based structure further undermines any correlation between quantum of gratification and culpability, as the amounts fluctuated with IAM's legitimate earnings and did not reflect the degree of the appellant's culpability. Moreover, Tan was the party who had sought out these bribes from the appellant.

122 Second, the DJ had erred in characterising the appellant's conduct as motivated by greed. It was not the appellant who had offered to pay kickbacks in order to secure the work assignments from Tan. It was Tan who initiated the request for kickbacks *after* the appellant had already entered into the arrangement with SMU. Tan progressively demanded larger percentages. As

recognised in *Wong Chee Meng* at [70], the size of a bribe reflects the *receiver's* greed for monetary gain. Here, Tan's escalating demands were reflective of *his* greed, not the appellant's. While the appellant had agreed to the corrupt arrangement and the increased percentage to preserve the business relationship between IAM and SMU, this reflected an acting in self-interest rather than greed. Crucially, the appellant was not seeking to procure a working relationship to which he was not legitimately entitled, but rather to maintain an existing commercial arrangement under pressure from Tan.

123 In *Public Prosecutor v Syed Mostofa Romel* [2015] 3 SLR 1166 ("*Romel*"), the court held that there were three broad and non-exhaustive categories of private sector corruption: (a) where the receiving party was paid to confer on the paying party a benefit that was within the receiving party's power to confer, without having regard to whether the payer ought properly to have received that benefit; (b) where the receiving party is paid to forbear from what he was duty bound to do, thereby conferring a benefit on the payer; and (c) where a receiving party was paid so that he would forbear from inflicting harm on the payer, even though there was no lawful basis for such harm to be inflicted. The third category was characterised by the heightened culpability of the receiving party by seeking out of payment from the payer as well as the threat to inflict harm on the payer without any lawful basis (*Romel* at [26]–[31]). We are conscious that the three categories of corruption in *Romel* concerned private sector corruption while the present case is a public sector corruption case, as SMU is a public body. Nevertheless, we do not see any reason why the three categories of private sector corruption in *Romel* cannot be adapted to public sector corruption cases.

124 In our judgment, the facts giving rise to the present case fall within the third category identified in *Romel*. The appellant wanted to secure IAM's

position as a marketing partner and call centre management service provider to SMU. The appellant had an ongoing business relationship with SMU as long as he provided satisfactory services to SMU. Yet, he faced the prospect of having to pay Tan bribes. Although we agree with the DJ that there was no evidence of any direct threat (see [118] above), the appellant was placed under considerable pressure from Tan, who had initiated the request for kickbacks and "knew that the [appellant] was unemployed". The appellant essentially agreed to Tan's request to avert possible undesirable consequences to his business interests. Tan then asked for larger amounts over time. This pressure amounted to an improper attempt to leverage the business relationship between IAM and SMU. Tan had no lawful basis for putting such pressure on the appellant.

125 The appellant's conduct was no doubt self-serving, since he stood to benefit from paying kickbacks to Tan as he would be able to preserve his business interests and continue the service arrangements with SMU. But it is also significant that the appellant did not actively seek to subvert SMU's interests. In fact, Tan had also advised the appellant to quote a lower price of $3,000 when SMU Academy decided to do an ITQ to search for a vendor to manage all its events. The appellant had therefore quoted $3,000 per roadshow and IAM was selected as SMU Academy's vendor. Although this transaction remained objectionable, as we had observed above at [116], SMU arguably suffered no direct or tangible loss from the corrupt transaction, and might even be said to have benefitted from being able to receive the required service at an acceptable cost (*Wong Chee Meng* at [64]).

126 As we had also noted above at [116], SMU may be said to have potentially suffered detriment in that other vendors who might have provided better services at a lower cost were thereby not engaged. However, we also bear in mind that there is no evidence of any actual detriment or loss suffered by

SMU. The appellant had borne the corrupt payments for Tan from his share of the commissions he earned legitimately from providing marketing and call centre management services to SMU. That had to be weighed against the appellant having also taken unfair advantage of information provided by Tan to bid successfully for SMU's ITQ roadshows.

127 Third, the corruption offences that were the subject of the ten proceeded charges were committed over a significant period of at least 15 months. The duration of offending remained a weighty consideration in determining his culpability. He could have chosen to put a stop to the matter by reporting Tan to the relevant authorities. Instead, he perpetuated his involvement in the corrupt transactions for an extended duration.

128 For these reasons, while we differ from the DJ's assessment of the appellant's culpability, it cannot be said to be at the lowest level.

129 We also agree with the DJ that the appellant was more culpable than his two other co-offenders, Jeffrey Long Chee Kin ("Long") and Cher Kheng Tham ("Cher"). They were sentenced to 13 months and 12 months' imprisonment respectively for giving much lower gratification sums totalling $71,300 and $62,800 respectively. Furthermore, Long and Cher had made corrupt payments over a shorter duration of less than a year and one contract term, unlike the appellant who was the first party to the kickback arrangement with Tan and continued with it through two contract renewals. Given the appellant's heightened culpability, his sentence should exceed those of his two co-offenders. On the other hand, it would not be correct in principle to consider parity with Tan, who received a 42-month imprisonment term on his plea of guilt to 15 charges. Tan had initiated the requests for kickbacks, and his

culpability was plainly the highest among all those involved in the kickback arrangements.

130 For the above reasons, we find that the individual sentences of between 12 to 14 months' imprisonment and the global sentence of 28 months were manifestly excessive. We reduce the sentences for the two charges involving the largest amounts of gratification exceeding $30,000 (*ie*, DAC-905414-2021 and DAC-905409-2021) from 14 months' imprisonment per charge to seven months' imprisonment per charge. The sentences for the three other charges involving gratification sums above $20,000 (*ie*, DAC-905413-2021, DAC-905415-2021 and DAC 905411-2021) for which 13 months' imprisonment per charge was imposed are similarly reduced to seven months' imprisonment per charge. As for the remaining five charges for which 12 months' imprisonment per charge was imposed, the sentence is reduced to six months' imprisonment per charge. In our view, these are the appropriate sentences as the harm in this case fell within the lower end of the "slight" harm category and the appellant's culpability fell within the mid-point of the "low" culpability category.

The 25 stood-down charges taken into consideration

131 We also had to consider the 25 charges which had been stood down. This was the final step of the *Wong Chee Meng* framework, which entailed making further adjustments to account for the totality principle (*Wong Chee Meng* at [88]). These charges were not taken into account by the DJ in sentencing since the parties had agreed for the appellate court to deal with them should the appeal against conviction be dismissed.

132 The applicable provision was s 390(9) of the CPC, which is reproduced below:

> At the hearing of the appeal, the appellate court may on the application of the Public Prosecutor, and with the consent of the accused, take into consideration any outstanding offences which the accused admits to have committed for the purposes of sentencing the accused.

133 The appellant consented for the 25 stood-down charges to be taken into consideration on appeal, and we consider it appropriate to do so. The 25 stood-down charges involved a further bribe amount of $121,430. The total amount of gratification in the 35 charges was therefore $337,952, and the duration of the 35 offences spanned two years and three months. In our view, this calls for a recalibration of his overall sentence. Significantly, the appellant accepted that an upward adjustment of sentence was appropriate, but that there should only be "a modest uplift".

134 We agree that there should be a modest uplift of the sentence imposed. We thus increase the sentence in respect of the two charges involving the largest sums of gratification (*ie*, DAC-905414-2021 and DAC-905409-2021) from seven months' imprisonment to 7.5 months' imprisonment, and order these terms to run consecutively, pursuant to s 307 of the CPC. The sentences for the remaining eight charges are ordered to run concurrently. As a result, the global sentence is therefore 15 months' imprisonment.

Conclusion

135 For the above reasons, we dismissed the appellant's appeal against conviction and allow the appeal against sentence.

136 Finally, we record our appreciation for the considerable assistance of Ms Ng, who aided the Court with her careful and thorough analysis of the question whether a public tertiary institution might be a "public body" under s 2 of the PCA.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

See Kee Oon
Judge of the Appellate Division

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