IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 269

Magistrate's Appeal No 9184 of 2018

Between

Huang Ying-Chun

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] — [Sentencing] — [Appeals]
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Introduction

1 The appellant, Huang Ying-Chun, is a Taiwanese national who was 52-years-old at the material time. He pleaded guilty to one charge under s 44(1)(*a*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA"). In essence, the appellant was involved as a runner for a foreign syndicate that cheated Singapore residents of their monies and laundered those monies out of Singapore. The syndicate operated what might colloquially be known as a "police impersonation scam".

2 The material part of the charge is as follows:

> You ... are charged that you, between 22nd June 2017 to 6th July 2017, in Singapore, were concerned in an arrangement, having reasonable grounds to believe that by the arrangement, the control of an unknown person's benefits of criminal conduct was facilitated and having reasonable grounds to believe that

> the said unknown person was engaged in criminal conduct, to wit, you collected and handed over of cash monies amounting to a total of about SGD$957,000 (Nine Hundred and Fifty Seven Thousand Dollars), which was the said unknown person's benefits from criminal conduct, and you have therefore committed an offence under section 44(1)(a) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, (Cap. 65A, 2000 Rev Ed) and punishable under section 44(5)(a) of the same Act.

3 The District Judge sentenced the appellant to six years and six months' imprisonment. Magistrate's Appeal No 9184 of 2018 is the appellant's appeal against sentence.

4 At the hearing of the appeal, both the appellant and the prosecution invited this court to set out a sentencing framework for s 44(1)(*a*) CDSA offences involving the laundering of cash proceeds of offences committed in Singapore. It was submitted by both parties that the existing sentencing precedents vary widely, and it was also pointed out that the question of a sentencing benchmark or framework had not previously been considered by the High Court. The parties were also largely agreed on the general schema of the framework to be adopted. Having reviewed the parties' submissions, and examined the existing case law, I accept that this is an appropriate occasion to propose a framework to guide sentencing for s 44(1)(*a*) CDSA offences concerning cash laundering.

The material facts

5 The Statement of Facts which the appellant pleaded guilty to without qualification is set out in full in the District Judge's Grounds of Decision in *Public Prosecutor v Huang Ying-Chun* [2018] SGDC 182 (the "GD"). I therefore set out only the essential facts in this appeal.

6 The appellant was involved in a police impersonation scam. It is helpful first to set out how these scams work. The scam in this case comprised four main steps, and involved three sets of people.

7 The first set of people are the victims. Unknown persons impersonating the Singapore Police or Interpol called six victims and cheated them into revealing their bank account login credentials. These unknown persons then used these credentials to access the victims' bank accounts and transfer monies to certain other bank accounts. The victims ranged from 50 years of age to 82 years of age. This comprised the first step of the scam.

8 The victims' monies were transferred to bank accounts belonging to the second set of people. These persons were not members of the syndicate, but instead had also been duped by persons impersonating the police into releasing their bank account details to persons acting on behalf of the syndicate, thus allowing monies to be transferred to their accounts by the victims. They may colloquially be known as "victim-mules". There were five victim-mules in this case, whose ages ranged from 28 years of age to 61 years of age. The victim-mules received the victims' monies in their bank accounts and held on to the monies until they received further instructions. This comprised the second step of the scam.

9 At the third step of the scam, the victim-mules were instructed by unknown individuals claiming to be from the police to withdraw cash from their bank accounts corresponding to the amount of money transferred into their bank account by the victims, and pass the cash to runners acting for the syndicate behind the scam. The victim-mules were not made to withdraw their own monies. To be clear, the runners would physically meet the victim-mules to

collect the cash; no monies were wired between bank accounts. The third set of people, the runners, therefore came into the picture at this third step.

10 At the fourth step of the scam, the runners who met with the victim-mules would pass the cash on to other runners who would carry the monies out of Singapore, presumably back to the syndicate in Taiwan.

11 I now flesh out the details of the appellant's involvement in this scam. Sometime in June 2017, in Taiwan, the appellant was approached by an unknown person to work for him. The job offered was for the appellant to go to Singapore and collect and hand over "documents". He would be paid NT$60,000, or approximately S$2,700, for this job. No time period for the job is specified in the Statement of Facts.

12 The appellant accepted this job offer, and came to Singapore on 21 June 2017. He arrived with a co-accused, one Chen Peng-Yu ("Peng-Yu"), also a male Taiwanese national. Other persons involved with the syndicate, besides the appellant and Peng-Yu, included Li Li, Hsieh Teng-Chia, and Long Say Piaw.

13 The appellant carried out his first collection of "documents" on 22 June 2017. The appellant was instructed by Peng-Yu to collect "documents" from one victim-mule, who had had S$50,000 deposited into her account by one of the victims. The appellant met the victim-mule and collected that S$50,000. From this first collection of "documents", the appellant realised the documents were actually monies. The appellant then passed the monies to another co-accused, Li Li. I shall refer to this sequence of events as the "first incident".

14 The appellant was involved in 12 other such incidents which generally

mirrored the sequence of events in the first incident. The amounts of money, the identities of the victim-mules, and the identities of the other runners the appellant interacted with differed, but the general *modus operandi* employed in each incident was the same. The appellant was therefore always the runner who came into the picture at the third step in the general scheme of the scam I described above at [7] to [10].

15 The appellant was involved in a total of 13 incidents over approximately two weeks. The first incident took place on 22 June 2017, and the last, on 6 July 2017. It suffices to note at this point that the total amount of money that passed through the appellant's hands was S$957,000. The amounts the victims were individually cheated of ranged between S$10,000 in the case of a 72-year-old female Chinese national, and S$650,000 in the case of an 82-year-old male Singapore citizen. Only S$1,050 was ultimately recovered by the police.

Decision below

16 The District Judge considered that given the nature and gravity of the offence committed, the main sentencing consideration would be deterrence. He noted that the victims had been tricked into providing their login credentials to unknown individuals who then accessed the victims' bank accounts to transfer the monies to the victim-mules. This undermined the confidence and integrity of Singapore's banking system. The scam also tarnished the image of the police. General deterrence was therefore warranted.

17 The District Judge considered that there were several aggravating factors involved. First, there had been considerable planning and coordination in perpetuating the scam. Second, the syndicate had deliberately targeted the elderly, who were more vulnerable. Third, a transnational syndicate had been involved, which made investigation of the scam cases more difficult. Fourth,

statistics showed that police impersonation scams were on the rise, which made general deterrence all the more pressing.

18 The District Judge also found some mitigating factors. Credit was given to the appellant for his plea of guilt, his remorsefulness, and his lack of antecedents in Singapore.

19 The District Judge considered several sentencing precedents and determined that the most relevant precedent was the unreported case of *Public Prosecutor v Wang Wei-Ming* (District Arrest Case No 927446 of 2017) ("*Wang Wei-Ming*"). As there were no grounds of decision given in that case, the District Judge noted that it was of limited usefulness as a precedent. In any event, analogising to that case, the District Judge determined that this case was much more serious because the amount cheated, the number of victims, and the number of occasions where the appellant interacted with the victim-mules were all higher. The offender in *Wang Wei-Ming* was sentenced to 42 months' imprisonment. This case, being more serious, warranted a sentence of six and a half years.

Parties' cases in this appeal

The appellant's case

20 The appellant appealed against the sentence of six years and six months' imprisonment on the grounds that it was manifestly excessive. The appellant's submissions can broadly be summarised as follows:

(a) The District Judge erred in giving undue weight to the sentencing principle of deterrence. Specific deterrence does not apply to the appellant, who in all likelihood will be deported from Singapore and not be permitted re-entry for having committed crimes here. Moreover,

general deterrence would be ineffective in a case such as this. Runners or 'money mules' like the appellant are often the less-educated, rural poor. They have limited awareness of scams. Further, runners have only very loose ties to the upper hierarchy of the syndicate. Runners are mere pawns to be sacrificed; the controlling minds of the syndicates would be undeterred in perpetuating their criminal activity. Indeed, deterrent sentencing of runners may be of little effect; despite more deterrent sentences imposed on similarly situated runners, the number of impersonation scams has only increased.

(b) The District Judge erred in failing to give sufficient weight to the principle of proportionality. He failed to recognise key facts such as the appellant merely being a money mule; the appellant's position as a mere runner; the appellant having participated in a scam which he originally thought was merely a legitimate job to collect and pass documents; the appellant having failed to benefit significantly from the scam; and the appellant not having recruited or trained other mules. Further, there should have been proportionality between the sentence for the CDSA offence here, and the predicate offence of cheating under s 420 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code").

(c) Further, the District Judge erred in his consideration of the levels of harm and culpability in this case. The level of harm appears to have been tied to the quantum of criminal proceeds involved, but quantum should not be the only factor in determining harm. The sentencing precedents fail to reflect this, and they similarly fail to make principled distinctions in the levels of culpability between differently situated accused persons.

21 The appellant also invited this court to adopt a new sentencing framework to guide sentencing for s 44(1)(*a*) CDSA offences. The appellant gave several reasons for doing so. First, the only reported High Court decision on s 44(1)(*a*) CDSA offences, *Ang Jeanette v Public Prosecutor* [2011] 4 SLR 1 ("*Ang Jeanette*"), did not set out any sentencing benchmarks or tariffs. Second, such sentencing precedents as do exist fail to consider how the sentence is situated along the full sentencing continuum provided for the offence. Third, the existing precedents place undue weight on the quantum of criminal proceeds in determining the level of harm, which has resulted in a high level of inconsistency and disparity in the cases.

22 The appellant proposed instead that this court adopt a sentencing framework which is modelled on the framework set out by Menon CJ in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev*"), and which further takes into account Chan J's analysis in *Abdul Ghani bin Tahir v Public Prosecutor* [2017] 4 SLR 1153 ("*Abdul Ghani*") that the sentence should be adjusted according to the offender's *mens rea* if that shows a lower level of culpability. *Logachev* was a decision concerning the offence of cheating at play, punishable under s 172A(2) of the Casino Control Act (Cap 33A, 2007 Rev Ed) ("CCA"). The appellant contended that it is apposite to adapt it for two reasons. First, the underlying offence of cheating is similar to that here, where victims are cheated of their monies which are then laundered out of the country. Second, Menon CJ's framework in *Logachev* touches on many of the factors that are also present here, for example, the involvement of a syndicate, the involvement of a transnational element, and the sophistication of the scam. On this basis, the appellant proposed a sentencing matrix as follows:

Harm / Culpability	**Slight**	**Moderate**	**Severe**
Low	Fine	Fine and/or up to 1 year's imprisonment	Fine and/or 1 to 2.5 years' imprisonment
Medium	Fine and/or up to 1 year's imprisonment	Fine and/or 1 to 2.5 years' imprisonment	Fine and/or 2.5 to 4 years' imprisonment
High	Fine and/or 1 to 2.5 years' imprisonment	Fine and/or 2.5 to 4 years' imprisonment	Fine and/or 4 to 7 years' imprisonment

23 Although the maximum custodial sentence for s 44(1)(*a*) CDSA offences is 10 years' imprisonment as s 44(5) CDSA sets out, the appellant submitted that it was appropriate to place the ceiling for the custodial term at a maximum of seven years' imprisonment for first time offenders, and a term exceeding seven years' imprisonment to be imposed only in respect of *repeat* offenders.

The prosecution's case

24 The prosecution's submissions were essentially that the District Judge had correctly identified general deterrence as the dominant sentencing consideration, and moreover had given appropriate weight to the relevant aggravating and mitigating factors. The submissions therefore generally affirmed the District Judge's reasons in the GD.

25 Upon receiving the appellant's submissions in this appeal, the prosecution sought my leave to file further submissions dealing specifically with the appellant's proposed sentencing framework. I granted leave for them

to do so and also for the appellant to file a reply if necessary. In the event, the appellant did not do so.

26 In its further submissions, the prosecution agreed with the appellant that Menon CJ's framework in *Logachev* could be adapted for the present case, and also invited me to do so. The prosecution did caveat, however, that the framework should be restricted only to those s 44(1)(*a*) offences that concerned the laundering of cash proceeds of offences committed in Singapore. This was because s 44(1)(*a*) CDSA is quite widely framed, and may capture other forms of misconduct quite different from cash laundering offences. The prosecution also generally agreed with the appellant as to the offence-specific and offender-specific factors that would feature in the analysis.

27 Where they parted ways, however, was on the ceiling the appellant had proposed of a maximum of seven years' imprisonment for the most serious offences featuring both severe harm and high culpability. The prosecution contended that this ceiling was artificially depressed, and failed to give effect to Parliament's intention that the full sentencing range be available to the sentencing court. Instead, it proposed its own sentencing matrix as follows:

Harm / **Culpability**	**Slight**	**Moderate**	**Severe**
Low	Fine and/or short custodial term	10 to 30 months' imprisonment	30 to 60 months' imprisonment
Medium	10 to 30 months' imprisonment	30 to 60 months' imprisonment	60 to 90 months' imprisonment
High	30 to 60 months' imprisonment	60 to 90 months' imprisonment	90 to 120 months' imprisonment

28 In addition, the prosecution also strongly contested two parts of the appellant's case. First, the prosecution submitted that CDSA offences are quite different from typical or conventional cheating offences under s 420 Penal Code, and it would therefore be inappropriate to make reference to those sentencing precedents for cheating offences in deciding sentences for s 44(1)(*a*) CDSA offences. The better comparator would be syndicated credit card cheating offences committed by foreign runners who, on the instructions of a foreign syndicate, enter Singapore and use counterfeit credit cards to make fraudulent purchases in Singapore, such as the offence in *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334. Second, the prosecution submitted that the appellant had wrongly incorporated *Abdul Ghani* in the sentencing framework.

Issues to be determined

29 The central question in this appeal is whether a sentencing framework should be adopted for s 44(1)(*a*) CDSA offences, and if so, what that framework should be.

30 For analytical clarity, I have decided to approach the issues in this appeal in the following order:

(a) Should a sentencing framework be adopted for s 44(1)(*a*) CDSA offences?

(b) If the answer to (a) is in the affirmative, what should that framework be? In particular, how should the framework:

(i) be scoped, so as to account for the breadth of possible misconduct captured under s 44(1)(*a*) CDSA?

(ii) address the sentencing of *repeat* offenders?

(iii) account for the relationship between the CDSA offence and the predicate offence?

(iv) account for the different mental states of the offender contemplated within s 44(1)(*a*) CDSA?

(c) How should the framework be applied to the present appeal?

Issue 1: A sentencing framework should be adopted

31 In my judgment, a sentencing framework should be adopted for s 44(1)(*a*) CDSA offences, subject to the caveat I explain below at [46]–[53]. There are three reasons for doing so.

32 The first reason is that there is a paucity of reasoned decisions concerning s 44(1)(*a*) CDSA that have to do with the laundering of cash proceeds of offences committed in Singapore. The four sentencing precedents presented to the District Judge were unreported cases. The District Judge observed that even the decision he found most relevant may not be of much useful value as a precedent, because no grounds of decision were given in that case. Some reported decisions on s 44(1)(*a*) CDSA offences were tendered before me in the appeal, but no considered attempts were made in these instances to situate the case along the sentencing continuum provided for by the offence. In my view, it would be useful for the High Court to set out a sentencing framework on this occasion to give guidance on sentencing.

33 The second reason is that the sentences which have been ordered in previous cases do not sit well or easily with one another. The appellant pointed out inconsistencies between cases with largely similar facts but notably different

sentences. The prosecution also acknowledged that the existing precedents could not easily be reconciled. Of the 12 precedents cited in its submissions, the prosecution accepted that at least three appeared to be outliers from the sentencing trend. These were the cases of *Public Prosecutor v Nikolic Predrag* (Magistrate's Appeal No 9198 of 2018); *Public Prosecutor v Kuo Fang-Ling* (District Arrest Case No 926508 of 2017) and *Public Prosecutor v Kuan Cheng-Yu* (District Arrest Case No 903598 of 2018 and others). Having surveyed the precedents, I agree that the existing precedents reflect some measure of inconsistency. I therefore consider that a sentencing framework would assist in achieving consistency in sentencing.

34 A third reason is that sentencing guidance from an appellate court would be especially useful at this juncture because there is, as the prosecution has put it, a "pipeline" of pending prosecutions and appeals against decisions relating to cash laundering offences under s 44(1)(*a*) CDSA. The prosecution informed me that those prosecutions and appeals have been stayed pending this decision, in view of their invitation to me to set out a sentencing framework here so as to obtain clarity and guidance for those future cases. I therefore consider that giving some guidance through a sentencing framework would be of some assistance to the disposal of those future cases as well.

Issue 2: The sentencing framework to be adopted

35 I come now to the crux of the discussion as to the framework itself. I agree with the parties that the framework in *Logachev* can usefully be adapted with some modifications for s 44(1)(*a*) CDSA offences involving the laundering of cash proceeds from offences committed in Singapore. In undertaking my analysis, I will: (a) first summarise and discuss the decision in *Logachev*; (b) explain how the sentencing considerations identified in *Logachev* are equally

applicable to s 44(1)(*a*) CDSA offences concerning cash laundering; (c) identify the additional factors that ought to be taken into consideration in the framework for s 44(1)(*a*) CDSA cash laundering offences; and (d) set out the steps involved in this framework.

The decision in Logachev

36 The decision in *Logachev* was a Magistrate's Appeal brought by one Logachev Vladislav, a Russian national, against his sentence for six offences under s 172A(2) CCA.

37 Logachev, along with two of his accomplices, was part of a Russian syndicate operating in foreign casinos. This syndicate targeted slot machines made by certain manufacturers which had a weakness in their play patterns. The syndicate had devised a means of exploiting this weakness by decoding the play patterns and thereby predicting future play outcomes. The role of the syndicate members was to record the play patterns of the machines in question, and then upload these patterns to a server for analysis and decoding. The decoded data enabled syndicate members to predict, with some degree of accuracy, the future outcomes of play on the targeted slot machines. The decoded data would be transmitted to syndicate members, who would play at the targeted slot machines. A smartphone device would alert them ahead of the next mass payout, thereby enabling them to win at those slot machines between 60 and 65% of the time.

38 In March 2016, Logachev made arrangements for some of the syndicate members to travel to Singapore. These syndicate members recorded the play patterns on specific slot machines at the casinos at Marina Bay Sands ("MBS") and Resorts World Sentosa ("RWS"). These recordings were then analysed, and the analysed data was given to Logachev, who in turn provided them to his accomplices. Logachev and his accomplices then travelled to Singapore in May

2016 and visited the casinos at MBS and RWS together, and exploited the compromised slot machines. The total amount cheated from the casinos was slightly over S$100,000. Logachev pleaded guilty to the six charges against him, and was sentenced by the District Judge to an aggregate sentence of 45 months' imprisonment.

39 In a wide-ranging and comprehensive judgment, Menon CJ set out the relevant sentencing considerations for offences punishable under s 172A(2) of the CCA (see [37] of *Logachev*). These are set out in tabular form below:

<table>
<tr><th colspan="2">Offence-specific factors</th></tr>
<tr><td><u>Factors going towards harm</u>
(a) The amount cheated
(b) Involvement of a syndicate
(c) Involvement of a transnational element</td><td><u>Factors going towards culpability</u>
(a) The degree of planning and premeditation
(b) The level of sophistication
(c) The duration of offending
(d) The offender's role
(e) Abuse of position and breach of trust</td></tr>
<tr><th colspan="2">Offender-specific factors</th></tr>
<tr><td><u>Aggravating factors</u>
(a) Offences taken into consideration for sentencing purposes
(b) Relevant antecedents
(c) Evident lack of remorse</td><td><u>Mitigating factors</u>
(a) A guilty plea
(b) Voluntary restitution
(c) Cooperation with the authorities</td></tr>
</table>

40 As I will shortly explain, all of these considerations are equally applicable to a s 44(1)(*a*) CDSA offence.

41 In addition, Menon CJ set out a five-step framework for s 172A(2) CCA offences, drawing from the frameworks established in *Stansilas Fabian Kester v Public Prosecutor* [2017] 5 SLR 755 (in the context of drunk driving that causes physical injury and/or property damage), and *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") (in the context of rape). I summarise these steps. First, the court should identify the level of harm, and the level of culpability. Second, the court should identify the applicable indicative sentencing range. Third, the court should identify the appropriate starting point within the indicative sentencing range. Fourth, adjustments should be made to the starting point to take into account offender-specific factors. Fifth, further adjustments should be made to take into account the totality principle. These five steps are also easily transposed to the present context.

The relevant sentencing considerations for cash laundering offences under s 44(1)(a) CDSA

42 As the above summary of *Logachev* makes apparent, there are many close parallels between the misconduct which was the subject of the s 172A(2) CCA offence there, and the misconduct which is the subject of the s 44(1)(*a*) CDSA offence here. At its heart, the offence of "cheating at play" set out in s 172A(2) CCA addresses misconduct involving the cheating of another person or entity. This is also true of s 44(1)(*a*) CDSA offences where the predicate offence involves the cheating of another person, as with scams like the police impersonation scam in this case. The *genus* of the *factual* behaviour underlying the offence is, in both cases, largely the same. Section 172A(2) CCA merely addresses the perpetration of this type of criminal conduct in a specific setting, that of the playing of a game at a casino, and can thus be seen as a species of

criminal behaviour falling under the broad rubric of cheating offences. And similarly, although s 44(1)(*a*) CDSA offences have a looser relationship with the factual misbehaviour that constitutes cheating in that cheating does not always have to be the predicate offence, where cheating *is* the predicate offence, the factual similarities with cheating offences become obvious. These similarities make the adaptation of the *Logachev* framework used to address the misconduct under s 172A(2) CCA particularly apt for s 44(1)(*a*) CDSA offences involving the laundering of cash proceeds from cheating offences in Singapore.

43 I should make clear, however, that this does not mean that the *purposes* for which the respective provisions were enacted are necessarily the same as those for cheating offences *simpliciter*, or indeed, with each other. As Menon CJ made clear in *Logachev* at [46], s 172A(2) CCA does not only target the particular mischief of casinos being cheated, but rather targets "criminal activity in general in our casinos". And similarly, as I point out below at [56] and [57], s 44(1)(*a*) CDSA offences target a wider ambit of criminal activity than offences involving cheating only. It is the underlying *facts* which are similar.

44 Quite apart from the similarities in the underlying facts that form the criminal misconduct in both cases, the framework in *Logachev* also addresses many of the sentencing considerations that feature in the present case, and indeed, would feature in cash laundering cases under s 44(1)(*a*) CDSA, even those where the predicate offence does not involve cheating. The *Logachev* framework incorporates sentencing considerations that would apply to almost all offences, such as the degree of planning and premeditation by the offender; the duration of offending; the offender's role; the offender's antecedents; and the offender's plea of guilt, amongst others. But it goes further in also analysing considerations that would feature less commonly, such as the involvement of a

syndicate, or the presence of a transnational element. These latter considerations, however, would not infrequently feature in CDSA offences, as this case makes clear. The similarities in the sentencing considerations analysed are therefore a further reason why the *Logachev* framework can serve as a useful model for CDSA offences.

45 I will shortly examine the sentencing considerations identified in the *Logachev* framework and explain why all of them can be transposed to the present context. But before I go further, it is necessary to address two preliminary points. The first is the scope of the sentencing framework in this case. The second is whether the framework should be based on a contested or uncontested charge.

The scope of the framework

46 The prosecution submitted that it would not be appropriate to set out a sentencing framework to cover *all* offences captured within the ambit or falling within the terms of s 44(1)(*a*) CDSA. This was because the provision is framed very broadly, and makes it an offence for a person to "enter into" or otherwise be "concerned" in an "arrangement" which facilitates the retention or control of another person's benefits of criminal conduct, "whether by concealment, removal from jurisdiction, transfer to nominees or otherwise".

47 I agree that the breadth of the provision means that it is difficult to identify the principal facts of an offence which enables the preliminary classification of a case within a sentencing matrix. This would ordinarily militate against the adoption of a sentencing matrix or framework in the first place. But, as the prosecution rightly points out, it is possible to isolate the principal facts which form the factual backbone of cash laundering offences. Thus, the framework I adopt in this judgment only addresses those s 44(1)(*a*)

CDSA offences which involve the laundering of cash proceeds of offences committed in Singapore (which I will hereafter refer to as "cash laundering offences"). I would not go so far as to identify a paradigm case of cash laundering offences, or indeed, to claim that the present case is the paradigm case. But s 44(1)(*a*) CDSA offences involving arrangements that are broadly similar to the present will naturally be captured by this framework.

48 The principal factual elements include (1) the laundering of cash or monies; (2) which cash and monies are the proceeds of offences committed in Singapore, and (3) the involvement of persons falling within the three categories I identify at the end of this paragraph. Although the *Logachev* framework was developed in the context of s 172A(2) CCA, an offence where the underlying facts essentially have to do with cheating, it is not necessary for the predicate offence under a s 44(1)(*a*) charge involving cash laundering to involve cheating. The cash that is laundered might be derived from the predicate offence of cheating, but equally it might be derived from some other offence. The persons principally involved would be: (a) runners who collect cash in Singapore and dissipate the monies, for example, by remitting the monies or handing them to other persons to remove the monies from the jurisdiction; (b) the persons who recruit these runners; and (c) the persons managing and/or coordinating these runners.

49 The argument might be made that it is inappropriate to carve out this specific category of cash laundering offences within s 44(1)(*a*). In my judgment, however, the precedents placed before me show a sufficient incidence – and indeed, a rising frequency – of this specific type of offence occurring. There is also a succession of similar cases waiting to be heard. In these circumstances, when the principal facts can be isolated as I have done, I see no reason not to adopt the framework.

Whether the framework should be based on a contested or uncontested case

50 The second preliminary consideration concerns the appropriate footing on which the framework ought to be developed, in particular, whether the framework should assume that the charge is contested or uncontested.

51 In *Terence Ng* at [40], the Court of Appeal expressed the following observation:

> … [W]e would clarify that the benchmark sentences we are laying down apply to "contested cases" – that is to say, convictions entered *following trial*. There are at least two reasons for this. The first is based on sentencing theory. The mitigating value of a plea of guilt cannot be fixed, but is personal to the particular *offender*, and it is affected by factors such as the degree of remorse displayed and the extent to which the offender had "no choice" but to plead guilty because he had been caught *in flagrante delicto* … We will elaborate on the proper weight to be ascribed to a plea of guilt later, but it suffices to say for now that it is clear that this makes it difficult to set a benchmark sentence by reference to uncontested cases [where] no uniform weight can be attached to a plea of guilt. The second is an argument based on constitutional principle. The law accords every accused person a basic right to plead not guilty and to claim trial to a charge … If the benchmarks were set by reference to uncontested cases then it would follow that an uplift should be applied where an offender claims trial. This would lead to the "appearance" that offenders who claim trial are being penalised for exercising their constitutional right to claim trial … [emphasis in original]

52 These observations apply to the present case. Here, I have formulated the framework on the premise that the offender has contested the s 44(1)(*a*) CDSA charge (even though the appellant did not do so). I acknowledge that in a number of the precedents tendered before me the offenders ultimately pleaded guilty. The appropriate weight will be attached to their pleas of guilt, which mitigating value will vary from offender to offender depending on the precise circumstances of the case.

53 The scope of the framework having thus been clarified, I will now explain why the sentencing considerations identified in *Logachev* are appropriate for the present case.

Offence-specific factors: factors going towards harm caused by the offence

54 In *Logachev*, Menon CJ at [40] to [55] identified a number of sentencing considerations that go towards the harm caused by the offence. I agree with his observations there, and find that those observations are similarly applicable to the present case. Briefly, the factors include: (1) the amount cheated; (2) the involvement of a syndicate; and (3) the involvement of a transnational element.

55 I would only elaborate my views as follows. As regards the amount cheated, my perusal of the s 44(1)(*a*) CDSA precedents shows that there is a tendency to rely heavily on the amount cheated as a proxy for harm. In my view, however, although the amount cheated is an important consideration, it should not be the sole or overriding metric by which harm is assessed.

56 Further, as regards syndicate involvement and the transnational element, I would observe that these factors are all the more significant in the context of the CDSA. The concerns about syndicate involvement are especially relevant to the CDSA context once we consider the history of this legislation. As noted by V K Rajah JA in *Ang Jeanette*, the CDSA was enacted to align Singapore's legislation with the relevant international conventions. In particular, the CDSA was amended to comply with the United Nations Convention against Transnational Organised Crime and the Protocols thereto ("the Palermo Convention"), which has the stated purpose of "promo[ting] cooperation to prevent and combat transnational *organised* crime more effectively" (emphasis added).

57 Similarly, the concern about a transnational element is especially relevant to CDSA offences, and might be said to be even more pressing in this context as compared to the CCA, because the CDSA and its predecessor legislation were intended to combat cross-border crimes and protect Singapore's hard-earned reputation as a global financial hub. At the second reading of the Drug Trafficking (Confiscation of Benefits) (Amendment) Bill 1999 (No 16 of 1999), Minister for Home Affairs Mr Wong Kan Seng said thus (see *Singapore Parliamentary Debates, Official Report* (6 July 1999) vol 70 (*"1999 Parliamentary Debates"*) at col 1731:

> Sir, since the Drug Trafficking (Confiscation of Benefits) Act… was enacted in 1993, global efforts to curb money laundering have intensified substantially. As trade and capital flows become increasingly international and **as Singapore expands its role as a financial centre, there is increased scope not only for cross-border crimes but also international money laundering to occur here.**
>
> Hence, further amendments to the DTA are necessary to enable us to deter and combat money laundering more effectively as well as to deprive criminals of the enjoyment of the benefits of their crime. **The amended legislation will give our enforcement agencies and financial regulators sharper tools in their work to help maintain Singapore's reputation as a well-regulated financial centre and a city largely free of crime**.
>
> [emphasis added]

Offence-specific factors: factors going towards the offender's culpability

58 Further, factors going towards the offender's culpability were also identified in *Logachev* at [56] to [62]. These factors are of general application and I adopt them here as well. Briefly, they include: (1) the degree of planning and premeditation; (2) the level of sophistication; (3) the duration of offending; (4) the offender's role in the criminal enterprise or scheme; and (5) abuse of position and breach of trust.

59 I make only a brief note that it is the sophistication of the *scheme* or criminal *enterprise* as a whole that is relevant, and not just the role of the individual offender within the greater scheme: *Logachev* at [58].

Offender-specific factors

60 It is unnecessary to go through the offender-specific factors at length, because these factors tend to be generally applicable across all criminal offences.

61 Established aggravating factors include the fact that (1) there are offences taken into consideration for the purposes of sentencing; (2) the offender has relevant antecedents; and (3) the offender displays an evident lack of remorse. Established mitigating factors include (1) a timely plea of guilt; (2) voluntary restitution; and (3) cooperation with the authorities. These points are elaborated upon at length in *Logachev* from [63] to [70], and I do not propose to repeat the analysis here.

The parties' proposed additional sentencing considerations

62 In addition to the sentencing considerations set out in *Logachev*, the parties submitted that there were other sentencing considerations that should be accounted for in the framework for s 44(1)(*a*) CDSA offences involving cash laundering. I examine them here.

(1) The seriousness of the predicate offence

63 The prosecution submitted that where the predicate offence underlying the CDSA offence is itself serious, this should weigh as a factor aggravating the CDSA offence. I understood that submission to mean that the court should inquire into the particular circumstances of the specific underlying offence at

hand and assess the seriousness of those circumstances; it would be odd to say that any one of the offences considered and specified by Parliament to be serious enough to be punished under the CDSA was not already serious as a class.

64 There is an intuitive appeal to this submission, but upon examination of this matter I consider that only limited weight should be given to this factor. The law is that the prosecution does not have to prove that the underlying predicate offence was made out in order to prove a s 44(1)(*a*) CDSA offence: *Ang Jeanette* at [58]. Thus, there is no need for the prosecution to prove *two* offences – the predicate offence and the CDSA offence – beyond a reasonable doubt every time it undertakes a prosecution under s 44(1)(*a*) CDSA.

65 Instead, the prosecution needs only to adduce some evidence linking the monies in question with particular criminal conduct, *ie*, some act that may constitute one of the offences listed in the Second Schedule to the CDSA, from which the monies dealt with in an arrangement under s 44(1)(*a*) are derived, and in which the other person is engaged or has engaged, or from which he has benefited: *Ang Jeanette* at [58]. Alternatively, circumstances could arise where the only logical inference to any reasonable person was that the monies involved in the arrangement were criminal property, and that the other person engaged, or had engaged in, or had benefited from, criminal conduct: *Ang Jeanette* at [58].

66 The above is the "careful course that Parliament has steered between requiring the Prosecution to prove the commission of a *specific predicate criminal offence* and allowing the Prosecution to make *wholly unparticularised allegations of criminal conduct*" [emphasis in original]: *Ang Jeanette* at [58].

67 A balance therefore has to be struck in giving weight to the facts and circumstances surrounding the predicate offence. The court hearing the CDSA charge will of course be apprised of some key facts concerning the underlying criminal conduct; the prosecution has to adduce sufficient information as to "the arrangement" that is a constituent element of the CDSA charge in order to succeed on the CDSA charge itself. To the extent that the facts are admitted and not contested, I consider that the court can rightly take that information into account. But where they are contested, the court will have to be more circumspect and satisfy itself that the allegations as to the *particulars* illustrating the severity of the predicate offence are sufficiently made out beyond a reasonable doubt before taking them into account as an aggravating factor in sentencing.

(2) The different mental elements of the s 44(1)(*a*) CDSA charge

68 The appellant submitted that a distinction should be drawn in the sentencing framework to account for the different mental states encompassed within s 44(1)(*a*) of the CDSA. It is helpful to set out the provision in full for context:

> **Assisting another to retain benefits from criminal conduct**
>
> **44.**—Subject to subsection (3), a person who enters into or is otherwise concerned in an arrangement, *knowing or having reasonable grounds to believe that*, by the arrangement —
>
> > (*a*) the retention or control by or on behalf of another (referred to in this section as that other person) of that other person's benefits of criminal conduct is facilitated (whether by concealment, removal from jurisdiction, transfer to nominees or otherwise);
>
> …
>
> [emphasis added in italics]

69 The appellant submitted that a distinction should be drawn between the different mental states of a person "knowing" as compared to "having reasonable grounds to believe" that he is facilitating the retention or control of another person's benefits of criminal conduct.

70 In this regard, the appellant drew my attention to the High Court decision in *Abdul Ghani*, where Chan J observed that because there were four possible *mens rea* variants under s 59(1) of the CDSA which were subject to the same maximum sentence, it would be helpful to identify the notional upper limits for each particular variant as an aid in determining the appropriate sentence when faced with different degrees of culpability for offenders. He thus determined the notional upper limits as follows: for "consent or connivance", the maximum term of ten years' imprisonment; for "recklessness", which is generally lower in culpability than "consent or connivance", a notional maximum term of approximately four years' imprisonment; for "negligence *simpliciter*", which is generally even lower in culpability than recklessness, a notional maximum of approximately two years' imprisonment: *Abdul Ghani* at [104].

71 Chan J went on to explain (at [105]) that the *mens rea* associated with the greatest culpability, *ie*, consent or connivance, would naturally be aligned with the statutory maximum term of imprisonment. But for recklessness and negligence *simpliciter*, the notional maximums were derived by comparison with similar criminal legislation in Singapore, where Parliament had statutorily provided for different maximum imprisonment terms corresponding with the differing levels of *mens rea*, *ie*, intentional or knowledge-based *mens rea* as compared to recklessness, and as further compared to negligence. Those statutes served as a guide in helping the court to stratify and calibrate the notional maximums where the CDSA itself did not stipulate the stratification.

72 In my view, it is not open to me to take the same approach of identifying notional maximums according to the two different states of *mens rea* present in the s 44(1)(*a*) CDSA offence. Chan J was assisted in his endeavour by having other pieces of legislation which had distinguished between the different *mens rea* variants and statutorily stratified distinct maximum terms of punishment according to the *mens rea*. The appellant could not point to any such legislation in this case where statute has conveniently demarcated the sentence by the two possibilities of "knowing" and "having reasonable grounds to believe" which are relevant here. To my knowledge, one example would be s 5(2) of the Official Secrets Act (Cap 213, 2012 Rev Ed) ("OSA") which contains similar terminology making it an offence for a person to receive secret information "knowing, or having reasonable ground to believe" that that information was communicated in contravention of the OSA, unless he can prove it was communicated contrary to his desire. But the section setting out the punishment, s 17 of the OSA, also does not set out distinct maximum punishments tied to the respective *mens rea*.

73 I am also aware that the High Court in *Ang Jeanette* has interpreted the phrase "reasonable grounds to believe" as essentially being analogous to the more common phrase "reason to believe": *Ang Jeanette* at [70]. This latter phrase finds expression in several offences in the Penal Code, for example s 154, amongst several others. But there is, as with s 44(1)(*a*) CDSA, only a single maximum imprisonment term specified for those offences, which does not cater to the respective *mens rea* possibilities. In these circumstances, I consider that it would be arbitrary for me to pick a notional maximum out of thin air, as it were. I therefore decline to do so.

74 That said, I recognise the logical force of the appellant's arguments that there is a distinction in culpability between an offender who *knows* that he is

facilitating the retention or control of another person's benefits of criminal conduct, as compared to someone only having reasonable grounds to believe that they are such. After all, as *Ang Jeanette* makes clear, a person having "reasonable grounds to believe" essentially has a "lesser degree of conviction than certainty but a higher one than speculation": *Ang Jeanette* at [70], whereas a person having actual knowledge is either certain or almost certain of the fact: *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 at [103]. It is therefore right for a court to recognise the distinction in culpability in sentencing, but only as a factor in the round.

75 I would caution, however, that it appears to me that the vast majority of s 44(1)(*a*) CDSA cases will be cases where charges are brought on the "reasonable grounds to believe" limb. Indeed, as Minister Wong Kan Seng noted in the *1999 Parliamentary Debates*, the limb was created to "facilitate enforcement because in practice, proof of actual knowledge is difficult to produce". Whatever precedents as are available will therefore in the vast majority of cases involve this latter limb. There will therefore not usually be a need to give a sentencing discount to account for the decreased culpability of the offender when comparing against the precedents which also involve this limb. Instead, in the rare case where the offender had actual knowledge of the criminal nature of proceeds, this would be grounds to find that the offender had heightened culpability justifying a higher sentence.

76 I would add also that an offender who is *wilfully blind* to the criminal nature of the proceeds will be taken to have actual knowledge of that fact. This is nothing more than the established position at law that wilful blindness amounts to actual knowledge: *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156.

(3) The treatment of repeat offenders

77 The appellant in his proposed sentencing table suggested, in effect, that notional maximums should be applied for first time offenders. His submission was that the upper end of the sentencing range, *ie*, the custodial term between seven and ten years of imprisonment, should be reserved only for repeat offenders.

78 The prosecution, on its part, argued that the sentencing ranges set out by Parliament should not be artificially depressed by the court, which is the effect of the appellant's submissions. The prosecution submitted that repeat offending should be treated as an offender-specific aggravating factor which ought to be taken into account in adjusting the sentence *after* the applicable sentencing range has been determined. The removal of the entire upper range of the punishment provided for by statute cannot be justified.

79 I agree with the prosecution's submissions. In my view, the court should, in developing a framework, use the entire range of punishment provided for under the statute. In this regard, I bear in mind the salutary words of the Court of Appeal in *Terence Ng* at [23] that a good guideline sentencing judgment should strive to create a "coherent picture of sentencing for a particular offence", *ie*, respecting the statutory context by taking into account "the *whole range of penalties* prescribed" [emphasis added]. The High Court has also on other occasions observed that a sentencing judge ought to note the maximum penalty imposed and then apply his mind to determine precisely where the offender's conduct falls "within the *entire range of punishment* devised by Parliament" [emphasis added]: *Poh Boon Kiat v Public Prosecutor* [2014] 4 SLR 892 at [60], citing *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 ("*Angliss*") at [86].

80 There is no reason to give overriding significance to the aggravating factor of repeat offending and on that basis depress the sentencing range across the board. It is, after all, only one of several aggravating factors that can be taken into account in sentencing. The appellant's arguments were directed at the fact that some margin must be given to accommodate repeat offenders, and suggested that this cannot be done if the statutory maximum has already been reached. But there are several difficulties in achieving this accommodation through the creation of artificial ceilings in the sentencing range.

81 First, it is contrary to Parliament's intent. As I have just noted, the court must ensure that the full spectrum of sentence devised and enacted by Parliament is explored in determining the sentence. There is nothing to suggest that Parliament intended for one sentencing range to apply for first time offenders, and another for repeat offenders.

82 Second, it is well-established that the maximum sentence should be reserved for the worst type of case falling within the offence: *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [44], citing *Angliss* at [84]. There is no reason why the worst type of offence must only involve a repeat offender. Indeed, a first offender can carry out conduct that is among the worst conceivable for that offence. The court's hands should not be tied in conveying the full extent of society's disapproval when it is most necessary to do so. The statutory maximum must be available to the court to impose in such cases.

83 Third, and following from the second, the use of a *range* of sentences within each cell in the sentencing matrix adequately accommodates the aggravating factor of repeat offending. I appreciate the appellant's submissions that a specific margin or buffer should be used to accommodate this factor. If the maximum punishment has already been visited on a particular offender for

having committed the worst conceivable type of conduct captured by the offence, how then should the court punish him if he does so again? In my view, however, it must be acknowledged that it is *rare* for an offender to commit the worst conceivable kind of conduct captured by the offence, and even *more rare* for an offender to commit that same type of conduct again. The court in developing a general framework should not take as its anchor the most extreme scenario and thereby tether the entire framework to this unlikely occurrence. Instead, in the rare case where the offender commits the worst type of conduct possible *again*, it is possible that the statute may itself provide for enhanced punishment, or that the prosecution will bring a more serious charge or press for corrective training or preventive detention where appropriate. It may also be that the court has no other option but to order the maximum punishment again. But the framework does not have to be set out in the shadow of this unlikely possibility. Instead, the use of sentencing ranges for each cell in the sentencing matrix adequately caters for the majority of cases where the offender will not have committed the worst type of conduct conceivable for the offence. So if he does repeat his offending, that can be addressed using a suitable uplift in sentence within the range available in that cell, or by a shift into a separate cell entirely.

84 The flaw of the appellant's logic also becomes obvious when we apply it in examining his proposed notional maximum custodial term for first offenders. The premise is that accommodation for repeat offending should be made by leaving a buffer at the upper end of the sentencing range. But an offender may repeat his offending not only once, but twice, or even thrice, and so on. It is not clear how the court can define a notional maximum or demarcate a buffer that properly accounts for each of these possibilities. As a matter of logic, the buffer catering for offenders who repeat the offence twice (*ie*, committing the offence three times) must be wider than that for offenders who

repeat the offence only once. The notional maximum is correspondingly more depressed for the former case, as compared to the latter. But the court does not have a crystal ball to gaze into the future; it cannot predict how many times, if at all, the offender will offend again. So it is impossible to determine the appropriate standard by which the notional maximum should be set. Additionally, and in any event, there is also no good reason to presuppose that the offender will reoffend again at all. After all, in cases such as the present, foreigners who commit the s 44(1)(*a*) CDSA offence will likely be deported after they serve their sentence, and barred from re-entering Singapore.

85 For the reasons I have just given, I consider that the full range of punishment set out by Parliament should be used. I therefore do not accept the appellant's proposed sentencing matrix.

(4) Whether commission of offence was the offender's sole purpose for being in Singapore

86 In *Fricker Oliver v Public Prosecutor and another appeal and another matter* [2011] 1 SLR 84, the High Court held that it would be aggravating where "foreigners who are in Singapore [are here] for the sole purpose of committing crime" (at [2]). I consider that this, too, is an aggravating factor relevant to the sentencing analysis here. But I would introduce an element of nuance. As the appellant has rightly pointed out, a useful distinction can be drawn between those offenders who come to Singapore with the intention to commit crime and duly do so; and those who only realise once they are in Singapore that the work they were led to believe was legitimate was in fact criminal in nature. In my judgment, the former category should be treated more severely than the latter. This distinction helps illuminate the different possibilities encompassed by the phrase "sole purpose".

(5) The offender's knowledge of the underlying predicate offence

87 Another point made by the parties was that the offender's knowledge of the underlying predicate offence would be material to the offender's culpability. I agree. The extent and degree of the offender's knowledge of the underlying predicate offence is relevant to his culpability for the CDSA offence. For example, it would be relevant to sentencing if it can be shown that the offender had honestly believed that he was assisting with another less serious predicate offence, as contrasted against an offender who knew that he was assisting with an elaborate and sophisticated scam targeting many victims.

88 But, as I have pointed out above at [64] to [67], the court must still be mindful that the prosecution does not have to prove the underlying predicate offence itself to succeed on the CDSA charge. Thus, to the extent that details and particulars of the underlying predicate offence are being relied upon to increase the offender's culpability, the court should require that such facts either be admitted in the Statement of Facts, or proven by the prosecution beyond a reasonable doubt. I therefore hasten to add that it will be necessary for the Statement of Facts or the evidence to be carefully scrutinised to determine the exact degree of the offender's knowledge of the underlying predicate offence.

89 I wish also to clarify that this consideration is distinct from the first consideration as to the seriousness of the predicate offence. That separate inquiry examines the seriousness of the predicate offence as a whole, and is relevant as a factor going towards the harm caused by the offence. The offender's knowledge of the full seriousness of the offence is irrelevant there. But this inquiry here examines what the offender actually knew was going on, and is instead relevant to establishing the offender's culpability. Further, the present inquiry is also distinct from the inquiry into the mental state of the

offender. The mental state of the offender is one of the constituent elements of the CDSA charge itself, and I have canvassed its role as a possible aggravating factor above at [68] to [76], whereas the knowledge of the underlying predicate offence is not and is therefore a separate inquiry.

(6) Public service rationale

90 The appellant also pointed to the possibility of the public service rationale being taken into account as a sentencing consideration. The public service rationale is typically referred to in the context of offences under the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA"), and is invoked in arguments capitalising on a distinction between private sector corruption and public sector corruption. In the High Court decision of *Public Prosecutor v Ang Seng Thor* [2011] 4 SLR 217, V K Rajah JA summarised the rationale as essentially referring to the public interest in preventing a loss of confidence in Singapore's public administration: at [33(a)]. A custodial sentence would normally be justified where there was a risk of this harm occurring: at [33(b)]. This sentencing approach is presumed to apply where the offender is a government servant or an officer of a public body, but it may also apply to private sector offenders where the subject matter of the offence involves a public contract or a public service: at [33(c)].

91 I do not think it is helpful or necessary to transpose the specific sentencing approach involving the public service rationale, fraught as it is with meaning developed in the PCA context, to the CDSA. I accept, however, that as a general point it will be an aggravating factor if the underlying predicate offence is proven to be one that has harmed confidence in Singapore's public administration. But this is not to say that predicate offences involving harm to the private sector or private individuals are not to be considered serious. The

level of harm, and the corresponding degree of aggravation, will have to be determined on the facts of the case.

(7) The offender's reward

92 The prosecution has also suggested that it is an aggravating factor that the offender was motivated by the promise of a reward. This submission was based on the premise that motive affects the degree of an offender's culpability for sentencing, and persons who act out of pure self-interest and greed should rarely be treated with much sympathy, citing *Zhao Zhipeng v Public Prosecutor* [2008] 4 SLR(R) 879 at [37].

93 I do not disagree with the submission that those who act out of greed should be treated more severely than those who were forced to act out of fear of some form of reprisal. But I would not ordinarily consider the promise of a reward to be an aggravating factor in most cases. It is to be expected that criminals who participate in cash laundering offences such as the present will seek to achieve some form of monetary reward or recompense. The mere fact that a reward is promised is therefore not a distinguishing factor from the ordinary case that would warrant it being considered an aggravating factor.

94 But I recognise that the size of the promised reward, or reward actually received, is a relevant factor in assessing culpability. Thus, the potential to receive, or actually having received, a very large reward can be considered aggravating.

95 Further, I also accept that the fact that the offender did not ultimately receive his reward is not to be considered a mitigating factor warranting a reduction in sentence: *Than Stenly Granida Purwanto v Public Prosecutor* [2003] 3 SLR(R) 576.

(8) Analogy with predicate offence

96 A final point made by the appellant was that an analogy should be drawn between the sentencing practice and precedents for the underlying predicate offence, and the s 44(1)(*a*) CDSA offence. In this case, for example, the appellant drew on precedents for s 420 Penal Code offences to highlight that even the masterminds of cheating scams were not sentenced as severely as the appellant here. The submission therefore was that there should be some form of parity or other calibration between the sentence for the CDSA offence and the sentence for the predicate offence.

97 I disagree with this approach. The CDSA offence and the predicate offence target different ills. The CDSA is tangentially concerned with the underlying predicate offence, in this case, cheating, but also has a broader ambit in targeting the laundering of monies through Singapore's financial system that will tarnish Singapore's hard-won reputation as a financial hub. Because of the wider concerns implicated, the sentencing practice and approach must be different. This is therefore not a relevant sentencing consideration to be included in the framework.

Summary of the relevant sentencing considerations

98 In light of the foregoing analysis, it is evident that the sentencing considerations identified in *Logachev* apply, together with the additional sentencing considerations I have accepted above. These considerations can conveniently be presented in tabular form as follows:

<table>
<tr><th colspan="2">Offence-specific factors</th></tr>
<tr><td><u>Factors going towards harm</u>

(a) The amount cheated

(b) Involvement of a syndicate

(c) Involvement of a transnational element

(d) The seriousness of the predicate offence

(e) Harm done to confidence in public administration</td><td><u>Factors going towards culpability</u>

(a) The degree of planning and premeditation

(b) The level of sophistication

(c) The duration of offending

(d) The offender’s role

(e) Abuse of position and breach of trust

(f) The mental state of the offender

(g) Whether commission of offence was the offender’s sole purpose for being in Singapore

(h) The offender’s knowledge of the underlying predicate offence

(i) The prospect of a large reward</td></tr>
<tr><th colspan="2">Offender-specific factors</th></tr>
<tr><td><u>Aggravating factors</u></td><td><u>Mitigating factors</u></td></tr>
</table>

(a) Offences taken into consideration for sentencing purposes (b) Relevant antecedents (c) Evident lack of remorse	(a) A guilty plea (b) Voluntary restitution (c) Cooperation with the authorities

99 I would add, however, that the sentencing considerations identified in this table are not to be considered closed. These considerations are non-exhaustive, and new sentencing considerations may be identified as the case law develops.

Issue 3: The five-step framework

100 I have decided to adopt a framework modelled on the five-step framework in *Logachev*.

Step one: identify the level of harm and the level of culpability

101 The first step is to consider the offence-specific factors set out in the table at [98] above and identify (a) the level of harm caused by the offence; and (b) the level of the offender's culpability. It is unnecessary to employ fine gradations in specifying the level of harm and the level of culpability, and it suffices to identify whether the level of harm is slight, moderate, or severe, and the level of culpability is low, medium, or high. As this is the first occasion on which the many sentencing considerations have been canvassed, I do not wish to be too prescriptive about when a case will fall into each of the categories at this time.

Step two: identify the applicable indicative sentencing range

102 Having regard to the sentencing range stipulated for s 44(1)(*a*) CDSA offences, I adopt the indicative sentencing ranges in the prosecution's sentencing matrix:

Harm / Culpability	Slight	Moderate	Severe
Low	Fine and/or short custodial term	10 to 30 months' imprisonment	30 to 60 months' imprisonment
Medium	10 to 30 months' imprisonment	30 to 60 months' imprisonment	60 to 90 months' imprisonment
High	30 to 60 months' imprisonment	60 to 90 months' imprisonment	90 to 120 months' imprisonment

Step three: identify the appropriate starting point within the indicative sentencing range

103 Having identified the indicative sentencing range, the third step is to identify the appropriate starting point within the range. The offence-specific factors are again examined, but this time with the object of granulating the case before the court to identify the specific sentence that is appropriate as a starting point in that particular case.

Step four: make adjustments to the starting point to account for offender-specific factors

104 The fourth step is for the court to make the appropriate adjustments to the starting point identified in the third step by taking into account the *offender*-specific aggravating and mitigating factors. It is possible at this stage for the starting point to shift outside the cell in which the indicative starting point was

identified, which might occur if, for example, there are several strongly mitigating or strongly aggravating factors involved.

Step five: make further adjustments to take into account the totality principle

105 The fifth and final step is for the court to make final adjustments to the sentence to take into account the totality principle. The content of the totality principle has been set out in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998. If three or more sentences of imprisonment are to be ordered, adjustments to the individual sentences may have to be made in order to ensure that the aggregate sentence accords with the totality principle: *Terence Ng* at [72].

Issue 4: Application of the sentencing framework to the present case

106 I now apply the framework I have set out above to the present case.

Step one: identify the level of harm and the level of culpability

107 The first step involves the consideration of the offence-specific factors.

The level of harm caused by the appellant's actions

108 There are several sentencing considerations which are relevant to the assessment of the level of harm caused by the appellant's actions.

109 First, the amount cheated here was substantial. A total of S$957,000 passed through the appellant's hands as a result of this scam. This is a factor tending towards a finding that there was a high level of harm, although it is not the overriding factor in the analysis.

110 The harm was also exacerbated by the fact that the victims of the scam were generally elderly, with the youngest victim being 50 years of age. In particular, it must be noted that the victim who has suffered the most is also the most elderly. An 82-year-old victim lost S$650,000 to this scam. And it bears noting that hardly anything was recovered, so the victims must now suffer the unease that comes with their financial affairs becoming more precarious despite their advanced years. It is especially unconscionable for the elderly to be targeted in this deplorable way. This is therefore a factor tending towards a finding of severe harm.

111 Before I turn to address the next factor, I note that the prosecution tendered various statistics before me showing the increased prevalence of police impersonation scams. For example, the prosecution noted that the first half of 2018 revealed a more than three-fold increase in such scams as compared to the same period last year, and more than a doubling in the total amount cheated. The statistics, however, do not confirm if this apparent rise in the numbers is truly because of increased offending. These statistics can conceivably also be explained by the fact that law enforcement may now be better at detecting these scams; or that there is now an increased rate of reporting, possibly linked to increased public awareness of such scams. And in any event statistics as to the prevalence of scams in general are not entirely helpful to determining the harm caused by *this appellant*. I therefore give no weight to the statistics.

112 Second, a criminal syndicate was involved. This has a deleterious impact on Singapore as a whole, and accordingly increases the harm of the appellant's actions.

113 Third, there was a transnational element involved, because the Taiwanese criminal syndicate operated across borders. As *Logachev* makes

clear at [54], it is the scheme or criminal enterprise which has to have a transnational element; it is not necessary for the individual offender to have known that there was a transnational element or to have himself crossed borders in carrying out the criminal scheme. This is true of the syndicate here, which targeted Singaporean citizens and residents using runners sent specifically to Singapore. The infiltration of foreign criminal elements into our borders must be strongly deterred.

114 Fourth, sufficient facts have been disclosed concerning the underlying arrangement or predicate offence to show that it was a serious one. The foreign syndicate was large enough to employ multiple runners, several of whom were caught and are now the appellant's co-accused. Moreover, the Statement of Facts also discloses that the syndicate has other operatives in Taiwan. The underlying offence, taking the form of a police impersonation scam, was also a serious one, because it exploited the public's trust in law enforcement agencies.

115 Fifth, there was harm caused to the confidence in public administration in Singapore, because the reputations of the Singapore Police Force and other law enforcement agencies like Interpol were tarnished by the syndicate members impersonating law enforcement officers.

116 In view of these factors, I assess the level of harm to be severe.

The appellant's level of culpability

117 There are also several factors going towards the offender's culpability.

118 First, the appellant displayed planning and premeditation in his participation in this scam. I note that the Statement of Facts does not go so far

as to show that he came to Singapore with the specific intention of committing crime; rather, he was told he would merely be collecting "documents". I can therefore accept that there is no evidence of the appellant having specifically premeditated coming to Singapore to commit crime. But the Statement of Facts is clear that upon the appellant's first collection of documents, he realised that the documents were actually monies. The Statement of Facts is also explicitly clear that he believed the monies he was to collect and hand over were proceeds of crime. So even if the first collection was not premeditated criminal activity, the subsequent collections were. This is an aggravating factor reflecting greater criminality on the part of the appellant.

119 Second, the criminal enterprise was fairly sophisticated, even accepting that it did not involve the same level of technological sophistication as the scam against the casinos in *Logachev*. There were several distinct parts to the criminal scheme employed by the syndicate here. The appellant's role was confined to only one of these parts; other persons made the calls duping the victims and victim-mules into revealing their log-in credentials, and yet other runners took the monies from the appellant and presumably spirited them out of the jurisdiction. There was a precisely-orchestrated and well-oiled machinery behind the criminal enterprise.

120 Third, the appellant's offending took place across 13 incidents spread over two weeks. In no way can this be described as short, and his spree of offending might well have continued unabated but for his arrest.

121 Fourth, I accept, however, that the appellant's role in the syndicate was not expansive. His role was limited to collecting the monies from the victim-mules and passing them on to other runners. He was nowhere near the apex of the hierarchy, and it would be fair to say he was merely a foot soldier.

122 Fifth, I accept also that there was no abuse of trust. The appellant did not interact directly with the victims, but only with the victim-mules. The victims could not therefore have reposed any trust in the appellant. Although the victims were vulnerable, that has been accounted for in assessing the harm caused by the offence. I do not think it is fair also to say that the appellant specifically targeted or abused the trust of any of the victims.

123 Sixth, so far as the mental state of the appellant is concerned, the charge was brought under the "reasonable grounds to believe" limb of s 44(1)(*a*) CDSA. The Statement of Facts suggests that the appellant "believed" the monies he was to collect and hand over were proceeds of crime; and similarly "believed the moneys he was collecting to handing over were derived from criminal conduct". There may be a fine but appreciable distinction between the offender "having reasonable grounds to believe" that he is participating in criminal conduct, and actually "believing" that he is doing so. But "believing" is not a distinct *mens rea* variant within s 44(1)(*a*) CDSA itself. This factor is concerned with the classification of the *mens rea* state as set out in the charge; it is therefore not an aggravating factor that the appellant had reasonable grounds to believe that he was facilitating the retention or control of another person's benefits of criminal conduct. I also note that the Statement of Facts says that the appellant "knew he was doing something illegal in collecting and handing over the moneys". I have not, however, assessed his mental state to be equivalent to that of "belief" or actual knowledge. Believing or knowing that one is participating *generally in something illegal* is not the relevant mental state for the purposes of this charge.

124 Seventh, I consider that the appellant was in Singapore for the sole purpose of offending. I appreciate that he may not have come to Singapore with the intention of offending; the Statement of Facts does not disclose that. But at

no time was it suggested that the appellant had some other legitimate purpose for being in Singapore. He remained in Singapore, as it were, for the sole purpose of committing crime. This factor raises the appellant's culpability.

125 Eighth, the Statement of Facts does not show whether the appellant knew and appreciated the full extent of the underlying police impersonation scam which formed the predicate offence. But he did know that he was participating in something illegal. In the circumstances, consistently with my observations at [123] above, I would not consider this to be a factor increasing the appellant's culpability.

126 Ninth, I consider that the reward offered to the appellant in this case was not so exceptional or extravagant that it should be considered an aggravating factor. The prosecution sought to impress upon me the fact that a reward of approximately S$2,700 was substantial for a job that purportedly only involved the collection of "documents". But that argument is not truly directed at the absolute value of the reward; instead, it is more directed at the knowledge the appellant must have had of the illegality of the job. That has already been accounted for above.

127 Although various factors are relevant to this analysis, I consider that the most important consideration is the appellant's role in this criminal enterprise. Bearing in mind the appellant's limited role in the syndicate, and taking all the relevant considerations into account, I consider that the appellant's culpability lies in the medium range for the purposes of the sentencing matrix.

Step two: identify the applicable indicative sentencing range

128 Having regard to the analysis above, the level of harm is severe, and the appellant's culpability lies in the medium range. The indicative sentencing range is therefore 60 to 90 months' imprisonment.

Step three: identify the appropriate starting point within the indicative sentencing range

129 In view of my analysis on the relevant sentencing considerations, I consider that the sentence should be nearer the lower end of the indicative sentencing range (of 60 to 90 months' imprisonment) as a starting point. In particular, although the harm caused is severe, it is important to remember that not all of the ills and harm caused by this syndicate – or indeed, syndicates in general – can be blamed on the appellant. The appellant played a limited role as a runner for the syndicate. I therefore consider the appropriate starting point to be 72 months' imprisonment.

Step four: make adjustments to the starting point to account for offender-specific factors

130 Only one offender-specific factor applies here. The appellant ultimately accepted responsibility and pleaded guilty, albeit not at the first opportunity. The appellant was charged on 8 July 2017, but only pleaded guilty on 4 June 2018. An appropriate discount would be six months' imprisonment. The adjusted sentence is thus 66 months' imprisonment.

Step five: make further adjustments to take into account the totality principle

131 Only one charge was brought in this case, and there is therefore no need to adjust the sentence on the basis of the totality principle.

Conclusion

132 For the foregoing reasons, I accordingly allow the appeal and sentence the appellant to 66 months' imprisonment, to take effect from 8 July 2017.

133 It only remains for me to thank both counsel for the appellant and the prosecution for their helpful submissions.

See Kee Oon
Judge

Koh Weijin, Leon (Xu Weijin) (N S Kang) for the appellant;
Loh Hui-min, Leong Wing Tuck and Tan Ben Mathias (Attorney-General's Chambers) for the respondent.