Chinpo Shipping Co (Pte) Ltd
v
Public Prosecutor

[2017] SGHC 108

High Court — Magistrate's Appeal No 9016 of 2016
Sundaresh Menon CJ; Chao Hick Tin JA and See Kee Oon J
23 February 2017

Criminal law — Statutory offences — United Nations (Sanctions – Democratic People's Republic of Korea) Regulations 2010

Criminal law — Statutory offences — Money-changing and Remittance Businesses Act

Criminal law — Elements of crime — *Actus reus*

Criminal law — Elements of crime — *Mens rea*

Criminal law — General exceptions — Mistake of fact

12 May 2017 Judgment reserved.

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

1 Chinpo Shipping Company (Private) Limited ("Chinpo") was convicted in the State Courts on one charge under the United Nations (Sanctions – Democratic People's Republic of Korea) Regulations 2010 (S 570/2010) (the "DPRK Regulations"), and one charge under the Money-changing and Remittance Businesses Act (Cap 187, 2008 Rev Ed) (the "MCRBA"):

> **1st charge**
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> that you, on 8 July 2013 in Singapore, did transfer financial assets or resources that may reasonably be used to contribute to the nuclear related programs or activities of the Democratic People's Republic of Korea, to wit, by transferring US$72,016.76 from your Bank of China bank account number [xxx] to one C.B. Fenton and Co., S.A., and you have thereby committed an offence under Regulation 12(b) of the United Nations (Sanctions-Democratic People's Republic of Korea) Regulations 2010) … which is punishable under section 5(1) of the United Nations Act, Cap. 339…
>
> **2nd charge**
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> that you, between 2 April 2009 and 3 July 2013, had carried on a remittance business, when you were not in possession of a valid remittance licence, and you have thereby committed an offence under section 6(1) of the Money-changing and Remittance Businesses Act, Cap. 187 (2008 Rev. Ed.) ("the Act") which is punishable under section 6(2) of the said Act.

2 Chinpo was fined S$80,000 on the 1st charge (the "DPRK Regulations Charge") and S$100,000 on the 2nd charge (the "MCRBA Charge"). The total fine of S$180,000 has been paid. Chinpo now appeals against its convictions and sentences under both these charges.

3 The grounds of decision of the District Judge (the "DJ") are reported at *Public Prosecutor v Chinpo Shipping Company (Private) Limited* [2016] SGDC 104 (the "GD").

Undisputed Background

4 As set out in the Statement of Agreed Facts,[1] Chinpo was incorporated in Singapore on 11 August 1970 by Tan Cheng Hoe ("Tan"). It carries on the businesses of "ship agencies & ship chandlers" (*ie*, representing ships and

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[1] Record of Proceedings, Vol 2 p 370.

supplying bunker, stores, and spare parts to them) and "general wholesale trade (including general importers and exporters)."

5 Tan was a director of Chinpo and its associated companies, Tonghae Shipping Agency (Private) Limited ("Tonghae") and Great Best Trading (Private) Limited ("Great Best") (collectively, the "Companies"). He was also a shareholder in Tonghae and Great Best, but not in Chinpo. There was no substantive separation between the Companies. They shared the same premises at 7500A Beach Road, #09-320/321 (the "Premises"), and the same set of employees. They used the same email account to communicate with entities from the Democratic People's Republic of Korea ("DPRK"), and used the same Bank of China ("BOC") account (the "BOC Account") to receive and perform remittances.

6 Tan has two daughters, Tan Hui Tin ("Hui Tin") and Tan Bee Tin ("Bee Tin"), both of whom were accounts executives in Chinpo as well as directors and/or shareholders in each of the Companies. Hui Tin and Bee Tin oversaw the day-to-day operations of the Companies, and all other staff reported to them. Still, Tan visited the Premises every day, and was consulted on "major matters" concerning the Companies.

Dealings with entities from DPRK

7 In the 1970s, Tan began interacting with DPRK entities while working as an employee in his brother's company, which dealt with DPRK entities. Subsequently, Korea Tonghae Shipping Co ("Korea Tonghae"), one of the largest ship operators in the DPRK, appointed Chinpo as its shipping agent. In 1984, Tonghae was established to be the shipping agent for Korea Tonghae, and Chinpo provided its ship agency services to other DPRK entities. Nevertheless,

Chinpo continued to provide goods and services to the vessels of Korea Tonghae, while Tonghae processed the documentation for the vessels to enter and depart Singapore.

8 After Korea Tonghae underwent a re-organisation in the late-1990s, Chinpo and Tonghae began providing their services to Ocean Maritime Management Company Limited ("OMM") instead of Korea Tonghae. Tan characterised OMM as the "new name" of Korea Tonghae. Among the vessels administered by Korea Tonghae (and then OMM) was the DPRK-flagged *MV Chong Chon Gang* (the "Ship"), which was owned by Chongchongang Shipping Company Limited, a DPRK one-ship company.

9 In 2005, Tan partitioned off part of the Premises for the DPRK Embassy in Singapore ("the Embassy") to use as its mailing address. Tan offered the partitioned area to the Embassy without cost to build goodwill with the DPRK entities. No one from the Embassy was based permanently at the Premises. At the suggestion of Tan, the Embassy listed Tan as its "security guard" with the Ministry for Foreign Affairs of Singapore so that he could enter the partitioned area and collect mail for it. These arrangements have continued since.

2 April 2009–3 July 2013 outward remittances totalling US$40,138,840.87

10 In the course of providing ship agency services to OMM, Chinpo received moneys from the sale of freight on behalf of OMM (via the BOC Account). With these funds, Chinpo paid for the costs of shipping the freight, the sums due to itself for ship agency services, and the salaries of the OMM staff stationed in Singapore. Thereafter, Chinpo remitted moneys left over to overseas entities in accordance with the instructions of OMM. Hui Tin and Bee Tin maintained the records of these remittances on behalf of OMM.

11 According to the Statement of Agreed Facts, between 2 April 2009 and 3 July 2013, Chinpo made 605 outward remittances on behalf of OMM and the other DPRK entities from the BOC Account (the "605 Remittances"), and charged a fee of at least US$50 per remittance on most occasions. The total value of the 605 Remittances was US$40,138,840.87.

12 By 2012, however, the demand for ship agency services from OMM had declined. Nevertheless, Chinpo maintained its office and kept its staff, hoping that business from OMM would pick up. Chinpo also continued remitting moneys for OMM to preserve its working relationship with OMM.

8 July 2013 outward remittance of US$72,016.76

13 On 11 April 2013, the Ship departed the DPRK for a voyage to Cuba and back (the "Voyage"). It called at the port of Vostochny, Russia, to re-fuel, and took on 10,201mt (*ie*, metric tonnes) of steel plates.

14 On 28 May 2013, Chinpo remitted US$54,269.76 to C.B. Fenton and Co., S.A. ("CB Fenton"), a shipping agent operating at the Panama Canal. This sum was payment for the transit expenses of the Ship in the Panama Canal (en route to Cuba), which the Ship passed through on 1 June 2013.

15 On 4 June 2013, the Ship discharged its cargo of steel plates at Havana, Cuba.

16 On 20 June 2013, the Ship docked at Mariel, Cuba, where it took on arms and related materiel (the "Materiel") comprising: (a) six trailers of SA-2 and SA-3 surface-to-air missile systems ("SAMs"); (b) two MiG-21 aircraft and engines for them ("MiG-21s"); and (c) ammunition and miscellaneous arms-related materiel such as rifles and night-vision binoculars.

17 On 24 June 2013, the Ship docked at Puerto Padre, Cuba, where it took on 10,500mt of sugar. Thereafter, it commenced its journey back to the DPRK.

18 On 1 July 2013, Chinpo received €253,365.56 from Expedimar S.A. ("Expedimar") for the cargo discharged at Havana. This inward remittance was received pursuant to an email instruction from OMM to Chinpo dated 23 June 2013, with Chinpo receiving the bill of lading of the Ship on 27 June 2013.

19 On 8 July 2013, Chinpo remitted US$72,016.76 to CB Fenton for the return passage of the Ship through the Panama Canal (the "Transfer"). This outward remittance was made pursuant to an email instruction from OMM to Chinpo dated 8 July 2013, which was silent on the purpose of the remittance.[2]

20 On 11 July 2013, the Ship was interdicted by the Panamanian authorities, who found the Materiel hidden under the 10,500mt of sugar.

Legislative frameworks

21 At the outset, it is worthwhile to set out the legislative frameworks within which the DPRK Regulations Charge and the MCRBA Charge operate.

22 Regulation 12(b) of the DPRK Regulations ("Reg 12(b)") provides:

> **Prohibition against provision of financial services and other resources**
>
> **12**. No person in Singapore and no citizen of Singapore outside Singapore shall —
>
> …
>
> (*b*) transfer financial assets or resources, or other assets or resources,

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[2] Record of Proceedings, Vol 2 p 375 (Exhibit P2).

> that may reasonably be used to contribute to the nuclear-related, ballistic missile related, or other weapons of mass destruction related programs or activities of the Democratic People's Republic of Korea.

We use "NRPA" (nuclear-related programs and activities) as shorthand for the nuclear-related, ballistic missile related, or other weapons of mass destruction related programs or activities of the DPRK.

23 In respect of the MCRBA Charge, s 6 provides that no person shall carry on "remittance business" without a valid remittance license. As for what constitutes "remittance business", s 2 of the MCRBA provides:

> **Interpretation**
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> **2**.—(1) In this Act, unless the context otherwise requires —
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> …
>
> "remittance business" means the business of accepting moneys for the purpose of transmitting them to persons resident in another country or a territory outside Singapore;
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> …
>
> (2) For the purposes of this Act, a person shall be deemed to be carrying on —
>
> …
>
> (*b*) remittance business if he offers to transmit money on behalf of any person to another person resident in another country.

24 With these frameworks in mind, we turn to the decision of the DJ.

Decision below

DPRK Regulations Charge

25 The DJ identified three legal issues in relation to the DPRK Regulations Charge:

(a) whether the Prosecution needed to prove that Chinpo knew that the Transfer that it made to CB Fenton (see [19] above) "may reasonably be used to contribute" to the NRPA of the DPRK (GD at [118]);

(b) whether the Materiel related, and whether the Transfer could contribute, to the NRPA of the DPRK (GD at [128] and [134]); and

(c) whether Chinpo exercised due care and attention to avoid breaching Reg 12(b) (GD at [135]).

26 The DJ held that Reg 12(b) created a strict liability offence, and did not require the Prosecution to establish that Chinpo had knowledge that the Transfer "may reasonably be used to contribute" to the NRPA of the DPRK. Unlike the other provisions in the DPRK Regulations, Reg 12(b) contained no express mental element. Further, the words "may reasonably be used to contribute" therein did not imply that the person transferring the funds had to have known the intended use of the funds. Rather, the Prosecution only had to prove that the funds transferred could reasonably be used to contribute to the NRPA of the DPRK. The general presumption in law that a mental element is a necessary ingredient of every offence was displaced. Parliament had intended to oblige persons to exercise "greater vigilance and due diligence" to avoid contributing to the NRPA of the DPRK. Nevertheless, s 79 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") provides for a defence of a mistake of fact (the "s 79 defence"). Hence, a person would not be liable for a breach of Reg 12(b) if it can be proved on a balance of probabilities that due care and attention to avoid the breach had been exercised (GD at [121]–[127]).

27 The DJ found that the Materiel, which comprised SAMs, MiG-21s, and other conventional weaponry, could reasonably be used to contribute to the NRPA of the DPRK. The DPRK was known to use SAMs to defend its nuclear

sites and MiG-21s in its military operations. Further, the Transfer was a necessary payment for the transportation of the Materiel from Cuba to the DPRK via the Panama Canal. Hence, the Transfer could reasonably be used to contribute to the NRPA of the DPRK (GD at [130]–[134]).

28 The DJ found further that Chinpo had failed to exercise due care and diligence to avail itself of the s 79 defence. By 2012, Chinpo should have known that OMM and the other DPRK entities with whom it dealt were state-owned entities whose funds were under the control of the government of the DPRK. Chinpo had, through Tan, a long and close relationship with the entities and diplomats of the DPRK, and knew that the representatives of the DPRK entities from whom Chinpo received instructions worked not simply for the DPRK entities concerned but also for the DPRK government. Further, Chinpo knew that DPRK entities were subject to international sanctions that prevented them from opening bank accounts to remit moneys, and that they had been taking steps to circumvent these sanctions. Yet, Chinpo simply assumed the moneys that it had been asked to remit by the DPRK entities belonged to the DPRK entities, did not query the purposes of the remittances, and executed the remittance instructions without delay. Chinpo even helped to conceal the transactions by omitting the names of the vessels concerned from the remittance application forms submitted to the BOC. The Ship itself had previously been detained in Ukraine with AK-47 rifles on board, with information about the detention available online, and Chinpo had on 8 February 2010 performed a remittance of US$52,500.00 on behalf of OMM entitled "Chong Chon Gang – Penalty". Further, Chinpo should have been suspicious of the purposes of the Voyage, having known that the Ship was traveling from the DPRK to Cuba through the Panama Canal, and having been asked by OMM to falsely declare the name of the Ship as "MV South Hill 2" to the BOC (GD at [135]–[150]).

MCRBA Charge

29 It was undisputed that Chinpo did not have a valid remittance license at the material time.

30 The DJ observed that a person who carried on a "remittance business" without a valid remittance license breached s 6 of the MCRBA. Further, s 2(2)(*b*) of the MCRBA extended the reach of the MCRBA to persons or entities who transmitted moneys on behalf of other persons via such intermediaries as a bank (GD at [153]).

31 The DJ held that an operation could come within s 2 of the MCRBA even if the making of remittances was not its core (or main or regular) function. The word "business" simply described an activity of a systematic and repetitive nature. Chinpo ended up holding large sums of moneys for OMM and the other DPRK entities. Moneys had been deposited with Chinpo even when no sums were due by their depositors to it, and where it had not otherwise been involved in the transactions. These deposits continued even after the depositors' demand for ship agency and ship chandelling services from Chinpo had drastically declined. Chinpo had also informed OMM on 7 January 2013 that it would continue to "help your company for inward/outward remittances". These remittances were clearly unrelated to the ship agency and ship chandelling services provided by Chinpo, and were made to assist the DPRK entities to access the banking system. An OMM representative had also agreed that OMM was using Chinpo as its payment agent (GD at [155]–[158]).

32 The DJ held that s 2 of the MCRBA did not require that carrying out the 605 Remittances *per se* had to yield a monetary profit for Chinpo, and Chinpo did in fact gain from doing so. Chinpo had been motivated by its desire to

maintain a working relationship with OMM and the DPRK entities for business gain. Further, in return for the assistance, Tan was given access to funds for his personal investments. For example, an OMM representative had granted Chinpo an interest-free loan of over S$1m to make silver investments (GD at [159]).

The Appeal – DPRK Regulations Charge

Chinpo's Submissions

33 Chinpo argues that Reg 12(b) requires the Prosecution to prove that it [*ie*, Chinpo] had *actually known* that the Transfer was in relation to items that could reasonably be used to contribute to the NRPA of the DPRK. The words "use" and "contribute" in Reg 12(b) connote knowledge of the purpose of the act, and a person cannot be said to have used or contributed a certain item for a purpose without having had knowledge of that purpose. In the alternative, the Prosecution must prove that Chinpo had made the Transfer negligent as to the effects of the Transfer. This promotes the objects of the DPRK Regulations by obliging persons engaging in financial transfers to actively inquire as to the purposes of the transfers that they perform, yet upholds the principle that there should be no offence without a guilty mind.

34 Chinpo submits that it had no reason to suspect anything was amiss when it made the Transfer. The DPRK entities were separate legal entities from the DPRK government, and it did not know that their representatives were working for the DPRK government. The representations and documents provided by the DPRK entities did not indicate that the Transfer and the prior remittances were for anything other than "shipping-related" matters. Finally, it had also asked the DPRK entities for the breakdown of remittance payments.

35 Chinpo adds that it is irrelevant whether, as the DJ found, the *Materiel* could reasonably be used to contribute to the NRPA of the DPRK. The concern of Reg 12(b) is whether the *Transfer* could do so. In this regard, the Transfer was payment only for the costs of the Voyage and not for the Materiel, and it did not know of the presence of the Materiel on the Ship. Even if it had queried the DPRK entities about the cargo on board the Ship, all that the shipping manifest stated was "sugar". In any event, the conventional weapons that comprise the Materiel fall outside the scope of NRPA under Reg 12(b), which encompasses only items that are "nuclear-related components".

Prosecution's Submissions

36 The Prosecution identifies two physical elements in the DPRK Regulations Charge:[3]

> (a) that Chinpo, by making the Transfer, transferred assets/resources to another person; and
>
> (b) that this transfer of assets/resources to that person may reasonably be used to contribute to the NRPA of the DPRK.

37 The Prosecution argues that Reg 12(b) does not require it to prove that Chinpo had known that the Transfer might reasonably be used to contribute to the NRPA of the DPRK. Designed to curb money-laundering activities by DPRK entities, Reg 12(b) would be promoted by obliging persons who deal with DPRK entities financially to exercise greater vigilance in such dealings. Concerns about unduly onerous liability are addressed by the availability of the s 79 defence.

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[3] Respondent's Submissions at [55].

38 The Prosecution adds that the word "reasonably" in Reg 12(b) does not require it to prove that Chinpo was negligent as to whether the Transfer might reasonably be used to contribute to NRPA of the DPRK. The word "reasonably" attaches to the nature of the transfer and not the state of mind of the transferor. This is to be assessed by reference to what the court can conclude *retrospectively* about the transfer, given its circumstances and outcome.

39 The Prosecution adopts the findings of the DJ that the Transfer could reasonably contribute to the NRPA of the DPRK, and that Chinpo did not exercise such care and attention as needed to avail itself of the s 79 defence. As set out in [122] of its submissions:

> … Chinpo had allowed itself to be used as a payment agent for the DPRK government and its entities. Chinpo did so knowing that the purpose of the arrangement was to allow the DPRK entities to circumvent banking sanctions. In making the remittances, Chinpo did not care to know what their purpose was and acted purely on the instructions of the DPRK entities, despite the various suspicious circumstances which should have led them to question the remittances. It also pro-actively assisted the DPRK entities in circumventing the sanctions by leaving out the [v]essel names from the remittance forms to avoid the funds being blocked. There were also clear red-flags surrounding the transfer in question, namely, the previous penalty Chinpo had paid in respect of the [Ship] and OMM's request to declare the name of a different vessel when BOC had questioned the inward remittance of the [Ship]'s freight.

Young Amicus Curiae's Submissions

40 The Young *Amicus Curiae*, Ms Clara Tung ("Ms Tung"), divides Reg 12(b) into two *actus reus* elements:

(a) the conduct of "transferring financial assets or resources"; and

(b) the circumstance that the financial assets/resources are those which may reasonably be used to contribute to the NRPA of the DPRK.

41 Ms Tung submits that the Prosecution must prove that Chinpo made the Transfer intentionally. However, the Prosecution need not prove that Chinpo knew that the US$72,076.16 transferred "may reasonably be used to contribute" to the NRPA of the DPRK. The word "reasonably" in Reg 12(b) imposes an objective standard that is inconsistent with the Prosecution having to prove subjective knowledge or any other mental state on the part of Chinpo. This conclusion is buttressed by the legislative object of Reg 12(b): to disrupt the access of the DPRK to the international financial system. Nevertheless, the s 79 defence is available to Chinpo, as a defence of general application that is not expressly excluded by Reg 12(b).

42 Ms Tung submits that strictly speaking, the question is not whether the *Materiel* may reasonably be used to contribute to the NRPA of the DPRK, but whether the *Transfer* may do so. This depends on what a reasonable person in the position of Chinpo would have known about the Transfer, having taken such care and attention as was reasonable in the circumstances.

43 Ms Tung points out that in any event, the conventional weaponry comprising the Materiel is subject to a blanket embargo under Regulation 5 of the DPRK Regulations[4] ("Reg 5").

Analysis

44 The DPRK Regulations are enacted under the United Nations Act (Cap 339, 2002 Rev Ed) ("UN Act") with the avowed object of giving effect to

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[4] Young *Amicus Curiae*'s Bundle of Authorities, Vol 1, at Tab 20.

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Resolution 1718[5] and Resolution 1874[6] of the Security Council of the United Nations (the "UNSC") (see Regulation 2 of the DPRK Regulations). Resolution 1718 was adopted on 14 October 2006 in response to a nuclear test conducted by the DPRK on 9 October 2006, and with the aim of imposing economic and commercial sanctions on the DPRK. Resolution 1874 was adopted on 12 June 2009, in response to a further nuclear test conducted by the DPRK on 25 May 2009, to widen the scope of the sanctions in Resolution 1718.

45 Reg 12(b) derives its language from Paragraph 18 of Resolution 1874, which calls upon Member States to prevent the transfer, through their territory and nationals, of assets and resources that "could contribute" to the NRPA of the DPRK:[7]

> …*[P]revent* the provision of financial services or *the transfer* to, through, or *from their territory*, or to or *by their nationals or entities* organized under their laws (including branches abroad), or persons or financial institutions in their territory, *of any financial or other assets or resources that* ***could*** *contribute* to the DPRK's nuclear-related, ballistic missile-related, or other weapons of mass destruction related programmes or activities, including by freezing any financial or other assets or resources on their territories or that hereafter come within their territories, or that are subject to their jurisdiction or that hereafter become subject to their jurisdiction, that are associated with such programmes or activities and applying enhanced monitoring to prevent all such transactions in accordance with their national authorities and legislation.[Emphasis added in italics and bold italics]

46 Cognisant of the broad range of techniques employed by the DPRK to mask its financial transactions, the UNSC designed Resolution 1874 to

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5 Young *Amicus Curiae*'s Bundle of Authorities, Vol 1, at Tab 23.

6 Young *Amicus Curiae*'s Bundle of Authorities, Vol 1, at Tab 24.

7 Young *Amicus Curiae*'s Bundle of Authorities, Vol 1, at Tab 24 p 4.

(*cont'd on next page*)

encourage Member States to exercise "extra vigilance" to ensure that their entities and nationals "do not contribute" to such proscribed activities as the NRPA of the DPRK (*Report of the Panel of Experts established pursuant to resolution 1874* (5 November 2010) (S/2010/571)[8] at p 4):

> The [DPRK] also employs a broad range of techniques to mask its financial transactions, including the use of overseas entities, shell companies, informal transfer mechanisms, cash couriers and barter arrangements. However, it must still, in most cases, rely on access to the international financial system to complete its financial operations. In structuring these transactions, attempts are made to mix illicit transactions with otherwise legitimate business activities in such a way as to hide the illicit activity. Therefore, the Panel of Experts underscores the importance of exercising ***extra vigilance to assure*** [*sic*] ***that financial transactions and services do not contribute to the [DPRK's] proscribed activities***. Special attention is drawn, in this regard, to non-proliferation and anti-money-laundering and combating the financing of terrorism principles and guidelines published by the Financial Action Task Force (FATF) and to the FATF *Typologies Report on Proliferation Financing*. [Emphasis added in bold italics]

47 These views were echoed at the Meeting of the UNSC on 12 June 2009 at which Resolution 1874 was adopted. There, various representatives on the UNSC exhorted Member States and international financial institutions to *pro-actively* "disrupt", "tackle", and "block" flows of funds that have the potential to support the NRPA of the DPRK (*Minutes of the 6141st Meeting of the United Nations Security Council* (12 June 2009) (S/PV.6141)[9] at pp 2, 5, and 8).

48 With these considerations in mind, we turn to the nature of Reg 12(b) and whether it creates an offence of strict liability.

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8 Young *Amicus Curiae*'s Bundle of Authorities, Vol 2, at Tab 37.

9 Young *Amicus Curiae*'s Bundle of Authorities, Vol 2, at Tab 34.

(*cont'd on next page*)

49 As the Court of Appeal observed in *Public Prosecutor v Koh Peng Kiat* [2016] 1 SLR 753[10] at [52]–[55], strict liability is a protean concept that is problematic in its application. First, different degrees of "strictness" might exist, in terms of the degree to which the Prosecution is spared from its burden of proving a mental element in respect of every physical element of the offence. Second, the physical and mental elements in an offence may overlap because some verbs may imply a state of mind in respect of a physical element of the offence. It may therefore be preferable to characterise the inquiry as one of whether the Prosecution bears the legal burden of proving a mental element on the part of the accused in respect of every physical element of the offence, rather than simply whether the offence is one of "strict liability".

50 To recapitulate, the relevant portion of Reg 12(b) reads:

> **Prohibition against provision of financial services and other resources**
>
> **12**. No person in Singapore and no citizen of Singapore outside Singapore shall —
>
> …
>
> (*b*) transfer financial assets or resources, or other assets or resources,
>
> that may reasonably be used to contribute to the nuclear-related … programs or activities of the Democratic People's Republic of Korea.

51 As the Prosecution and Ms Tung point out, and Chinpo does not dispute, Reg 12(b) comprises two physical elements:

(a) the fact of a ***transfer*** of financial or other assets/resources ("Limb 12.1"); and

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[10] Young *Amicus Curiae*'s Bundle of Authorities, Vol 3, at Tab 65.

(b) the fact that the transfer *may* ***reasonably*** *be used* to ***contribute*** *to the NRPA* of the DPRK ("Limb 12.2").

52 The Prosecution accepts that it bears the burden of proving that the Transfer was made by Chinpo intentionally (*ie*, that Limb 12.1 imports a *mens rea* of intention).[11] We agree, and find in any event that such intention is clear and uncontroversial on the facts of this case. The relevant remittance application form (BOC Reference NBRMOT13004163) shows that Chinpo directed BOC to perform the Transfer.[12] We thus focus on the more controversial question of whether the Transfer could reasonably be used to contribute to the NRPA of the DPRK, and what mental element, if any, this physical element of the DPRK Regulations Charge imports (*ie*, whether Limb 12.2 imports a *mens rea* requirement, and, if so, what it is).

Mental state vis-à-vis *Limb 12.2*

53 By its natural and ordinary meaning, Limb 12.2 does not require knowledge on the part of the accused that the relevant transfer may reasonably be used to contribute to the NRPA of the DPRK. The words, "that may reasonably be used to contribute", qualify the nature of the financial assets/resources transferred; they do not impose a requirement of a mental state on the part of the accused in relation to the contribution of those financial assets/resources to the NRPA of the DPRK. The adverb, "reasonably", in particular, connotes an objective standard by which the liability of the accused is to be assessed. Such a standard is incompatible with a requirement for a subjective mental element of "knowledge" on the part of the accused, leaving

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11 Respondent's Submissions at [56].

12 Record of Proceedings, Vol 2 p 373.

aside the fact that there is nothing in the language of Reg 12(b) to suggest that knowledge of the contribution of the Transfer to the NRPA of the DPRK must be proved. And this conclusion is reinforced by reading Reg 12(b) in light of Singapore's obligations under Resolution 1874; specifically that of encouraging persons in Singapore to exercise greater vigilance to prevent the transfer of financial and other assets/resources to the DPRK.

54 The fact that Reg 12(b) creates a strict liability offence does not mean that the knowledge of the accused is irrelevant. The evidence may show that the accused actually knew that he was, by his transfer of assets/resources, aiding the NRPA of the DPRK. If so, that would be a seriously *aggravating* circumstance that would, upon conviction, warrant punishment at the upper end of the range of sentences under s 5(1) of the UN Act.[13] Moreover, such knowledge would imply that a natural person, and not simply a corporate entity, was involved in the wrongdoing, and a term of imprisonment would then be available as a sentencing option.

55 Nevertheless, as the Prosecution accepts, an accused may avail itself of the s 79 defence – a mistake of fact by a person who has acted in good faith having exercised due care and attention to avoid the mistake – which is of general application to offences under all written laws in Singapore pursuant to s 40(2) of the Penal Code. However, the s 79 defence is not applicable to Chinpo, which clearly made no checks or queries in relation to the Transfer. As the DJ found, Chinpo by the material time knew or ought to have known that OMM was a state-owned entity whose funds were under the control of the DPRK government. Yet Chinpo simply executed its remittance instructions

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[13] Young *Amicus Curiae*'s Bundle of Authorities, Vol 1, at Tab 18.

"without delay" and without raising any queries (see [28] above). Counsel for Chinpo suggested before us that Chinpo had acted in good faith because its conduct in relation to the Transfer was consistent with its past dealings with OMM. However, we are unable to accept this contention because the past practice of Chinpo, as the DJ found, did not involve it exercising due care and attention by querying or otherwise verifying the nature of the remittance transactions that it had been asked to undertake on behalf of OMM.

Physical requirements of Limb 12.2

56 The DJ appears to have founded her conclusion that Limb 12.2 under the DPRK Regulations Charge had been made out on the bases that the Materiel could be said to reasonably contribute to the NRPA of the DPRK, and that the Transfer was a "necessary payment" for the transportation of the Materiel to the DPRK (at [27] above). However, the question under Reg 12(b) is whether the *Transfer* could reasonably be used to contribute to the NRPA of the DPRK, rather than whether the *Materiel* could do so. This is reflected in the language of the DPRK Regulations Charge, which refers to the Transfer of US$72,016.76 as the subject-matter that "may reasonably be used to contribute" to the NRPA of the DPRK. What the Transfer was ultimately used to pay for, and the nature of and potential uses of the Materiel on board the Ship, are factors in the assessment of whether the Transfer could reasonably contribute to the NRPA of the DPRK. Nevertheless, the ultimate question remains that of the contribution (or effect) of the Transfer to the NRPA of the DPRK. With respect, the DJ appears to have glossed over this in her reasoning.

57 To facilitate understanding of the physical requirements of Limb 12.2, we divide it into its two constituent sub-limbs, the burden of proving both of which in relation to the Transfer lies with the Prosecution:

(a) "may reasonably be used" ("Limb 12.2.1"); and

(b) "to contribute to the nuclear-related … programs or activities of the [DPRK]" ("Limb 12.2.2").

58 Limb 12.2.2 sets out the ***effect*** of the relevant transfer (described in Limb 12.1): a ***contribution*** to the NRPA of the DPRK. This is to be assessed as a factual matter and *retrospectively*, with all relevant information taken into account to determine whether (or not) the relevant transfer did (or did not) in fact contribute to the NRPA of the DPRK. That said, on its natural and ordinary meaning, Limb 12.2.2 appears to extend to *any* (and every) contribution to the NRPA of the DPRK, *no matter how innocuous and no matter how far removed* from the NRPA of the DPRK. As the Prosecution and Ms Tung accepted at the hearing before us, such a reading of Limb 12.2.2 is potentially over-inclusive, and extends well beyond the mischief that the DPRK Regulations seek to regulate. For example, a transfer that goes to the acquisition of a nuclear warhead would clearly fall within Limb 12.2.2. However, what about a transfer that goes to the payment of the transportation costs of the nuclear warhead? Or, as counsel for Chinpo contended before us, a transfer that goes to the payment of the medical expenses of the crew of the vessel that transported the nuclear warhead? Or, as is the case here, a transfer that goes to the payment of the passage of a ship carrying conventional weapons that could possibly be used in defence of the facilities in which the NRPA of the DPRK is carried out?

59 On a separate note, adopting too broad and over-inclusive an interpretation of Limb 12.2.2 would have the effect of prohibiting all financial dealings with the DPRK generally rather than targeting those that may reasonably be used to contribute to the NRPA of the DPRK. It would then render the qualifying words meaningless and otiose.

60 There are two ways in which this potential over-inclusiveness of Limb 12.2.2 is qualified. First, Limb 12.2.2 should be read no wider than that which is necessary to tackle the mischief that Reg 12(b) seeks to regulate, which is the acquisition by the DPRK of equipment, material, software, and technology directly used in the production of nuclear weapons. Second, Limb 12.2.1 further limits the transfers that fall within Reg 12(b) to those which "may reasonably be used" to achieve the purposes under Limb 12.2.2. We explain each in turn.

61 In our view, Limb 12.2.2 regulates only transfers that can be used to acquire assets that have a *direct* contribution to the nuclear *proliferation* efforts of the DPRK, *ie*, the development of nuclear weapons. This is borne out in para 8(a)(ii) of Resolution 1718, by which the UNSC directed Member States to prevent the "supply, sale or transfer to the DPRK" of the assets set out on two lists, which had been prepared by France and supported by 36 other Member States. The UNSC believed that the assets set out on the two lists "could contribute to DPRK's nuclear-related … programmes". The two lists were adopted by the UNSC as Document S/2006/814 (United Nations Security Council, "Letter dated 13 October 2006 from the Permanent Representative of France to the United Nations addressed to the President of the Security Council", 13 October 2006). Document S/2006/814 makes it plain that the scope of the assets that can contribute to the NRPA of the DPRK is limited. It extends only to (a) "nuclear material, equipment and technology"; and (b) non-nuclear but "nuclear-related dual-use equipment, materials, software and related technology". The former relates, *inter alia*, to "nuclear explosives", "sensitive facilities, technology and material usable for nuclear weapons or other nuclear explosive devices", "[uranium] enrichment facilities, equipment and technology", and "non-nuclear materials for [nuclear] reactors" (International

Atomic Energy Agency, "Communications Received from Certain Member States Regarding Guidelines for the Export of Nuclear Material, Equipment and Technology", 20 March 2006, INFCIRC/254/Rev.8/Part 1[14] at pp 1, 2, 7–10). The latter refers to "equipment, materials, software and related technology that could make a *major contribution* to a 'nuclear explosive activity,' an 'unsafeguarded nuclear fuel-cycle activity' or acts of nuclear terrorism" [emphasis added] (International Atomic Energy Agency, "Communications Received from Certain Member States Regarding Guidelines for the Transfer of Nuclear-related Dual-use Equipment, Materials, Software and Related Technology", 20 March 2006, INFCIRC/254/Rev.7/Part 2 at p 1). Notably, although Document S/2006/814 has subsequently been updated in accordance with the adoption by the UNSC of new resolutions against the DPRK, the contents of these two lists remain unchanged. Further, even as recently as in the *Report of the Panel of Experts established pursuant to resolution 1874* (7 February 2014) (S/2014/147)[15] (the "*2014 Panel of Experts Report*"), there is nothing to suggest that the conventional weapons that comprised the Materiel could reasonably be used to contribute to the NRPA of the DPRK.

62 On the other hand, Limb 12.2.1 ***qualifies*** the effect (which is described in Limb 12.2.2) of the transfer of assets/resources (as set out in Limb 12.1). The formulation, "may reasonably be used", in Limb 12.2.1 appears to be unique to the DPRK. However, a helpful analogy may be drawn from the law of criminal negligence. An accused is negligent if "a reasonable man in the same circumstances would have been aware of the likelihood of damage or injury to

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[14] Young *Amicus Curiae*'s Bundle of Authorities, Vol 2, at Tab 28.

[15] Respondent's Bundle of Authorities, Vol 2, at Tab 46.

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others resulting from [his] conduct" (*Ng Keng Yong v Public Prosecutor and another appeal* [2004] 4 SLR(R) 89[16] at [88]). This is primarily objective standard: that of the reasonable person in the same circumstances as the accused. Where the accused has special knowledge or experience, he will be held to the standard not of the ordinary person on the street, but "the standard of the ordinary skilled man exercising and professing to have that special skill" (*Lim Poh Eng v Public Prosecutor* [1999] 1 SLR(R) 428[17] at [29]; David Ormerod, *Smith and Hogan's Criminal Law* (Oxford University Press, 13th Ed, 2011)[18] at para 6.1.2.1). Accordingly, Limb 12.2.1 imposes an *objective* standard by which the effect of the transfer of assets/resources falls to be assessed. The focus of the inquiry is not whether the accused subjectively appreciated the effect of his act of making the transfer, but whether the assets/resources transferred appear ***reasonably*** able to be ***used*** to contribute to the NRPA of the DPRK. This calls for a *prospective* inquiry which the court must undertake objectively – from the perspective of a reasonable person with the knowledge and in the circumstances of the accused – to assess whether such a person would have appreciated that the transfer (as set out in Limb 12.1) could have the effect of contributing to the NRPA of the DPRK (as described in Limb 12.2.2).

Our decision

63 It is clear and undisputed that Chinpo had knowledge of the following facts:

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16 Young *Amicus Curiae*'s Bundle of Authorities, Vol 4, at Tab 71.

17 Young *Amicus Curiae*'s Bundle of Authorities, Vol 3, at Tab 69.

18 Young *Amicus Curiae*'s Bundle of Authorities, Vol 5, at Tab 103.

(a) that the Transfer was for a sum of US$72,016.76 to CB Fenton, a shipping agent operating at the Panama Canal (see [14] above);

(b) that the Transfer went to payment of the transit expenses of the Ship through the Panama Canal, which the Ship passed through on 8 July 2013 (see [19] above); and

(c) that the Transfer was made in connection with the return leg of the Voyage from Cuba to the DPRK (see [19] above).

64 On the other hand, we find that Chinpo had no knowledge that the Ship was carrying the Materiel on the return leg of the Voyage from Cuba to the DPRK. The Materiel was hidden beneath 10,500mt of sugar (see [20] above), and the shipping manifest stated that the Ship was carrying only "bagged raw sugar and spare polyethylene bags" (*2014 Panel of Experts Report* at Annex VIII, para 35). Although Chinpo appears to have unquestioningly complied with the email instruction from OMM to effect the Transfer (to CB Fenton) despite the absence of details from OMM on the purpose of the Transfer, it is not clear that Chinpo would have been any the wiser even if it had queried OMM about the cargo on board the Ship.

65 Reading Reg 12(b) as creating an offence of strict liability imposes a very onerous burden on an accused, who may not fairly know the limits of his liability and hence would not be meaningfully able to take preventive steps to avoid breaching the regulation. In that same vein, it also makes it virtually impossible for an accused to carry out reasonable diligence to avail itself of the s 79 defence. Even if Chinpo had demanded to see the manifest of the Ship, and had managed to procure a copy for inspection, it would not conceivably have seen anything to put it on alert.

66 The Prosecution's case runs on the notion that there were "red flags" raised by the circumstances surrounding the Transfer and previous remittances on behalf of DPRK entities that should have put Chinpo on alert *vis-à-vis* the Transfer. For the Transfer, OMM had requested that a different name be declared for the Ship despite nothing to suggest that the ownership of the Ship had been changed, and the BOC had queried the nature of the cargo on the Ship and the consignee thereof. Previously too, the Ship had been detained in Ukraine with AK-47 rifles on board and a penalty had been assessed on the Ship. More generally, Chinpo must have been aware that the DPRK entities were subject to international sanctions and had been taking steps to avoid those sanctions, and should have "question[ed] the legitimacy of the remittances it was making." Yet, "Chinpo made no such enquiries and was contented to believe that all the remittances were for shipping-related purposes."[19]

67 However, the fact that there were, in the words of the Prosecution, "red flags" raised by the circumstances surrounding the Transfer says little about the steps that Chinpo should have taken to avail itself of the s 79 defence. Even if Chinpo had queried OMM about the cargo on board the Ship, or demanded to see the shipping manifest, all that Chinpo would likely have learnt was that the Ship was carrying "bagged raw sugar and spare polyethylene bags" Similarly, the fact that there had been remittances in the past that were not "shipping-related" says nothing about the Transfer, which was clearly shipping-related. In essence, short of sending someone to board the Ship and inspect the cargo, it is unclear what more Chinpo could have done to satisfy itself as to the propriety of the cargo.

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[19] Respondent's Submissions at [3].

68 Of course, this is moot on the facts and in the circumstances of the Transfer. As the DJ found, Chinpo made no inquiries at all and "took the position that it will pay to whoever the DPRK entities wanted them to pay and avoid any delays" (GD at [167]). Accordingly, Chinpo is unable to avail itself of the s 79 defence.

69 Nevertheless, we are of the view that the Transfer cannot fairly be described as a transfer that "may reasonably be used to contribute to the nuclear-related … programs or activities of the [DPRK]".

70 As we have found (at [61] above), Limb 12.2.2 extends only to transfers that can be used to acquire assets that have a *direct* contribution to the nuclear *proliferation* efforts of the DPRK. The Transfer went not to the acquisition of the Materiel but to the payment of port fees and related charges for the Ship to cross the Panama Canal. Although the Materiel had been on board the Ship, this was not known to Chinpo when Chinpo made the Transfer. Hence, the Transfer is at least somewhat removed from a transfer of funds in direct support of the NRPA of the DPRK, which is the mischief that Reg 12(b) targets. Moreover, as the DJ found based on the evidence of the expert for the Prosecution, Dr Graham Gerard Ong-Webb ("Dr Ong-Webb"), the Materiel "were not nuclear related components but constituted part of the conventional military capability" of the DPRK (GD at [38]). The *2014 Panel of Experts Report* was silent on whether the Materiel could in fact contribute to or otherwise benefit the NRPA of the DPRK, as Dr Ong-Webb confirmed.[20]

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[20] Record of Proceedings, Vol 1 pp 74–75.

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71 We note that Dr Ong-Webb gave evidence that the Materiel could go towards the conventional military capability of the DPRK that allowed it to protect its nuclear assets including weapon production facilities and missile sites.[21] This evidence is relied on by the Prosecution to submit that the Materiel – even the modest rifles therein – could contribute to the overall nuclear capability of the DPRK. However, there is a large logical leap between transferring funds for the passage of a vessel through the Panama Canal (without knowing of the presence of the Materiel on the vessel) and concluding that the transfer could "contribute" to the NRPA of the DPRK. Admittedly, the language of Limb 12.2.2 on its face permits such a conclusion. Yet, such an expansive construction, which effectively extends Reg 12(b) to all transfers *somehow* connected with the acquisition of *any* military equipment by the DPRK, sits uneasily with the mischief that the DPRK Regulations seek to regulate. We reject it, and confine Limb 12.2.2 to transfers with a *direct* contribution to the NRPA of the DPRK.

72 Even if we accept the evidence of Dr Ong-Webb that the Materiel can be used in the defence of the nuclear assets of the DPRK, and can therefore reasonably be used to contribute to the NRPA of the DPRK, there is a further hurdle for the Prosecution to surmount: that of proving that the *Transfer* could contribute to the NRPA of the DPRK. In this regard, sufficient "contribution" under Limb 12.2.2 could arguably be established if the Transfer, although made ostensibly to pay for the passage of the Ship through the Panama Canal, was made with complicit knowledge on the part of Chinpo that the cargo contained the (conventional) weapons that comprised the Materiel. To take another example, an even clearer case under Limb 12.2.2 would be present if the

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[21] Record of Proceedings, Vol 1 pp 59–61.

Transfer had in fact been made for the outright *purchase* of the Materiel, and Chinpo had arranged for the Materiel to be loaded and concealed on board the Ship.

73 On the evidence, the Materiel comprised only conventional weaponry. Dr Ong-Webb opined that the SAMs and MiG-21s therein could "contribute to the overall defence" of the DPRK, which included defending and protecting its nuclear assets (ie. the defence of nuclear sites).[22] However, he accepted that the SAMs were "not nuclear related" and "do not perform a nuclear role in the sense that the missiles in particular are not deemed to be those that would carry a nuclear explosive to their targets". He conceded too that the MiG-21s found on board the Ship were "training aircraft", and that he could not confirm whether the DPRK had actually used MiG-21s in its military operations.[23] We are therefore unconvinced as to the contribution, for the purposes of Reg 12(b), of the SAMs and MiG-21s to the NRPA of the DPRK. More pertinently, Dr Ong-Webb appears to have taken the same expansive view that even the ammunition and miscellaneous arms-related materiel such as rifles and night-vision binoculars found on board the Ship could "contribute to the overall defence" of the DPRK. If we accept this opinion as conclusive of what "could reasonably be used to contribute" to the NRPA of the DPRK for the purpose of Reg 12(b), it would ultimately extend Reg 12(b) to even mundane logistics such as food and toiletries that facilitated the functioning of the NRPA of the DPRK. In our view, this is untenable, and it would exemplify the problem of over-inclusiveness that we have described (at [58]-[59] above).

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22 Record of Proceedings, Vol 1 p 78.

23 Record of Proceedings, Vol 1 pp 73–77.

74 We recognise that the opinion of Dr Ong-Webb was not challenged by Chinpo. However, the question of whether the shipment of the Materiel falls within the mischief of Reg 12(b) is essentially a legal inquiry. Likewise the question of the effect of the Transfer, which facilitated shipment of the Materiel. In our view, the Transfer fell outside the mischief of the DPRK Regulations.

75 We are also of the view that the act of Chinpo in making the Transfer does not fall within the ambit of Limb 12.2.1. All that Chinpo knew, and as in fact appeared to be the case, was that the Transfer paid only for the passage of the Ship through the Panama Canal. Nothing suggests that Chinpo knew that the Transfer paid for a voyage that would have the effect of resulting in the shipment of the Materiel (even assuming that the shipment of the Materiel could contribute to the NRPA of the DPRK for Limb 12.2.2). The Materiel was loaded on to the Ship through the act of a separate third party, of which Chinpo had no knowledge. Although Chinpo knew that it was dealing with representatives of the DPRK government, it was unlikely to have been apparent to a reasonable person in the position of Chinpo that its transfer of funds to pay for the passage of the Ship through the Panama Canal (even with all the "red flags", which was not the Prosecution's case in any event) would have facilitated the shipment of the Materiel to the DPRK.

76 For completeness, even if the sale of conventional weaponry would come within the blanket embargo under Reg 5 (as argued by Ms Tung),[24] Reg 5 is inapplicable here. Reg 5 deals with the *direct* sale, supply, or transfer of weaponry to the DPRK. Chinpo cannot possibly be said to have engaged in such conduct by its act of making the Transfer, which paid only for the passage of

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[24] Young *Amicus Curiae*'s Bundle of Authorities, Vol 1, at Tab 20.

the Ship through the Panama Canal. In any event, the DPRK Regulations Charge is under Reg 12(b) and not Reg 5.

77 In conclusion, we find that the DPRK Regulations Charge cannot be sustained, as the physical requirements of Limbs 12.2.1 and 12.2.2 have not been made out:

(a) It fails at Limb 12.2.1 because a reasonable person with the knowledge and in the circumstances of Chinpo would not have appreciated that the Transfer could have had the effect of contributing to the NRPA of the DPRK for the purpose of Limb 12.2.2, particularly since the Transfer went purely to payment of the passage of the Ship through the Panama Canal.

(b) It fails at Limb 12.2.2 because the Materiel comprised only conventional weaponry, and a payment for the passage of a vessel (even one that, unknown to Chinpo, was carrying the Materiel) falls outside the scope of the assets that can "contribute" to the NRPA of the DPRK.

The Appeal – MCRBA Charge

Chinpo's Submissions

78 Chinpo submits that it did not carry on a "remittance business".

79 First, it did not make "remittances" under s 6 of the MCRBA. It simply put up applications to the BOC to perform the 605 Remittances. The BOC was the entity that transferred the funds to the payees concerned. The BOC was a

licensed remittance agent, and bore the duties and obligations imposed by the MCRBA on a remittance business, particularly with regard to due diligence.[25]

80 Second, it did not profit monetarily from the making of the 605 Remittances, while a "business" is an activity carried out for gain. The US$50 that it charged on most of the instances where it made the remittances covered only its costs, particularly that of travelling to and from the BOC.[26]

81 Third, it effected the 605 Remittances merely incidentally to its primary businesses of ship agency and ship chandelling. All of the 605 Remittances were for the purpose of port disbursements, and the payees in question were mostly shipping agencies.[27] Moreover, the making of such transfers is part of the business of a shipping agent, who typically effects payments of the expenses that a ship incurs during its operations on the instructions of the ship owner. Imposing a licensing burden on shipping agents simply because they make such remittances would be unduly onerous.[28]

Prosecution's Submissions

82 The Prosecution argues that the term, "remittance", under s 6 of the MCRBA should be interpreted broadly: to include a person who *engages a financial institution* to facilitate a transmission of funds to other persons outside Singapore. This is necessitated by the purpose of the MCRBA, which seeks to prevent money-laundering and counter the financing of terrorism

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[25] Appellant's Submissions at [183]–[186].

[26] Appellant's Submissions at [170]–[173].

[27] Appellant's Submissions at [174]–[177].

[28] Appellant's Submissions at [178]–[182].

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("AML/CFT"). Further, such an interpretation has been adopted by the Monetary Authority of Singapore ("MAS") in MAS Notice 3001 dated 24 April 2015 (last revised on 30 November 2015)[29] ("MAS Notice 3001"), which provides AML/CFT guidance to holders of money-changers' licenses and remittance licenses.[30]

83 The Prosecution accepts that remittances made incidentally to a core business fall outside s 6 of the MCRBA. However, it argues that once Chinpo is proven to have offered to transmit money on behalf of another person, s 2(2)(*b*) of the MCRBA applies to shift the burden of proving the purpose of a remittance from the Prosecution to Chinpo. Specifically, Chinpo must prove on a balance of probabilities that the 605 Remittances were made only incidentally to its main business of ship agency and ship chandelling and not as a standalone business.

84 The Prosecution adds that a remittance need not be carried out for the purpose of gain to fall within s 6 of the MCRBA. The test for a "business" is simply that of system, continuity, and repetition. Although the definitions of a "business" under the Business Registration Act (Cap 32, 2004 Rev Ed) ("BRA") and the Moneylenders Act (Cap 188, 2010 Rev Ed) ("MLA") do allude to an element of gain, the BRA and MLA are, unlike the MCRBA, predominantly concerned with consumer protection and not AML/CFT.[31]

85 The Prosecution submits finally that Chinpo carried on a remittance "business" within s 6 of the MCRBA in relation to the 605 Remittances. Chinpo

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29 Respondent's Bundle of Authorities, Vol 2, at Tab 48.

30 Respondent's Submissions at [156]–[164].

31 Respondent's Submissions at [191]–[197].

offered to transmit moneys on behalf of the DPRK entities to persons outside Singapore, and by virtue of s 2(2)(*b*) of the MCRBA, was deemed to be carrying on remittance business. Further, Chinpo was unable to rebut this presumption. By 2012, the demand for its ship agency and ship chandelling services from the DPRK entities had dwindled, yet Chinpo continued to accept large deposits of moneys from them – that far exceeded the sums due to it for its shipping-related services – for the purpose of transmitting the moneys to persons outside Singapore. This allowed the DPRK entities to access the international banking system, and circumvent the international sanctions imposed on the DPRK. Finally, Chinpo did in fact gain from carrying out the 605 Remittances. It maintained goodwill with the DPRK entities, and took the benefit of an interest-free loan made by a representative of OMM.

Young Amicus Curiae's Submissions

86 Ms Tung submits that the licensing requirement for "remittance businesses" under s 6 of the MCRBA extends to a person who engages an intermediary to effect transmissions of funds to persons outside Singapore. A "remittance" is defined as "accepting moneys for the purpose of transmitting them to persons … outside Singapore" (s 2 of the MCRBA). Parliament in deciding to regulate "remittance houses" sought to address concerns about AML/CFT in the transmission of moneys (*Singapore Parliamentary Debates, Official Report* (15 August 2005) vol 80 ("2005 *Debates*")[32] at col 1224 (Tharman Shanmugaratnam, Minister for Education and Second Minister for Finance)). Hence, Parliament could not have intended that the notion of "transmission" in s 2 of the MCRBA be understood so narrowly as to include

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[32] Respondent's Bundle of Authorities, Vol 2, at Tab 52.

only the mechanical act of transmitting moneys, but rather to include also the instructing of a financial intermediary to transmit moneys. In light of s 2(2)(*b*) of the MCRBA, a person will be presumed to be carrying on remittance business if he offers to transmit money on behalf of any person to another person outside Singapore.

87 Ms Tung adds that the mere fact that a person transmits moneys, or engages intermediaries to transmit moneys, only as an *unrelated* ***secondary*** business (as opposed to an activity incidental or ancillary to the core business), should not take him outside the scope of the MCRBA. The legislative intent is that even persons who carry on remittances as an activity secondary to the selling of stationery or the selling of general provisions must be licensed under the MCRBA.[33]

88 Ms Tung observes, on the other hand, that the legislative intent was to regulate only the remittance industry, which comprises those who offer remittances as a service in its own right, rather than persons who make remittances incidentally to the provision of their primary business services.[34] Nevertheless, by virtue of s 2(2)(*b*) of the MCRBA, the licensing requirement under s 6 of the MCRBA would apply unless a person who offers to transmit moneys on behalf of another person demonstrates that his transmission of moneys is made merely as an incident of the main business. It is fair to place this evidential burden on a person who transmits funds, because the scope and purpose of the transmissions would be a matter within his knowledge.

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33 Counsel's Note at [4.6].

34 Counsel's Note at [4.7].

Analysis

89 It is undisputed that Chinpo did not have a remittance license for the purpose of s 6 of the MCRBA at the time when it undertook the 605 Remittances. Accordingly, two questions remain:

(a) First, whether the 605 Remittances constitute "remittances" within the ambit of the MCRBA; and

(b) Second, whether Chinpo, in executing the 605 Remittances, conducted a "business" that attracted the licensing requirements under s 6 of the MCRBA.

"Remittance"

90 Section 2(1) of the MCRBA defines only the term, "remittance business", but not the term, "remittance". That said, based on the definition of a "remittance business", a "remittance" appears to be the act of "accepting moneys for the purpose of *transmitting* them to persons resident in another country or a territory outside Singapore" [emphasis added]. Even so, the MCRBA is silent on what a transmission of moneys entails.

91 The parties differ on the breadth with which "remittance" and "transmission" should be read. Chinpo argues that the terms encompass only the person who performs the actual transmission of money. The Prosecution and Ms Tung suggest that the terms should encompass a person under whose instructions the transmission of money is effected as well.

92 When the MCRBA was conceived in 1979, the legislative concern was to protect the public from errant money-changers and remitters by imposing a licensing regime to preclude "undesirable persons" from conducting such businesses (*Singapore Parliamentary Debates, Official Report* (7 September 1979) vol 39[35] at col 410 (Hon Sui Sen, Minister for Finance)). In 1996, however, Parliament observed that remittance businesses could be used to perpetrate money-laundering activities. Hence, there was a need to impose on "remittance houses" record-keeping requirements over and above the licensing requirements to which they were already subject (*Singapore Parliamentary Debates, Official Report* (2 May 1996) vol 66 ("1996 *Debates*")[36] at col 36 (Dr Richard Hu Tsu Tau, Minister for Finance)). By 2005, AML/CFT had become the predominant focus of the MCRBA (2005 *Debates* at cols 1223–1224 (Tharman Shanmugaratnam, Minister for Education and Second Minister for Finance)):

> The amendments [to the MCRBA] aim to refine and better reflect the MAS' supervisory approach towards holders of remittance licenses and moneychanging licenses. I should state at the outset that MAS' supervision of these activities *focuses on anti-money laundering and countering the financing of terrorism*. MAS does *not supervise holders of these licenses for their safety and soundness*. This approach of focusing on anti-money laundering rather than safety and soundness of remittance houses and money-changing operations is similar to those adopted by other reputable financial centres. It places responsibility on customers to choose their remittance channels wisely.
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> [emphasis added]

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35 Respondent's Bundle of Authorities, Vol 2, at Tab 50.

36 Respondent's Bundle of Authorities, Vol 2, at Tab 51.

93 In pursuit of this AML/CFT object, Parliament took a broad view of the ambit of the monetary transmissions that fall within s 6 of the MCRBA. Thus, the crux of a "remittance" is *an acceptance of funds from a payor and a facilitation of the delivery of the funds to an intended payee, regardless of the mechanics by which the funds are eventually delivered*. An intermediary by accepting and then delivering funds from a payor to a payee adds a layer to the transaction that obscures the identity of the payor. The MCRBA seeks to address this concern by requiring that the intermediary be licensed and placed under the supervision of the MAS. This applies regardless of whether the intermediary personally delivers the funds to the intended payee, or engages another intermediary (whether a friend or a financial institution) to deliver the funds.

94 In a written answer to a question on the MAS' regulation of remittance business in 2002, the then-Deputy Prime Minister and Minister for Finance Lee Hsien Loong observed that a remittance may be made not only (directly) through an employee or an overseas agent, but also (indirectly) through another intermediary such as a friend, a relative, or even a bank (*Singapore Parliamentary Debates, Official Report* (3 May 2002) vol 74 at col 715):

> The remittance industry has grown over the years, but it remains a traditional business, with many small players operating on the basis of relationship and trust. Many are sole proprietorships or family-owned partnerships which cannot institute the same degree of internal controls that larger financial institutions like banks insist upon. *Also, remittance houses often use parties such as* ***friends***, ***relatives***, ***employees*** *and* ***unregulated overseas agents*** *instead of* ***banks*** *to deliver funds to designated beneficiaries overseas.* … This is why it is difficult to introduce measures to enhance significantly the safety and soundness of remittance houses…
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> [emphasis added in italics and bold italics]

95 An overly-technical interpretation of what a "remittance" or "transmission" constitutes could also lead to illogical conclusions. In the globalised world of today, moneys may be transmitted in a myriad of ways. Except where a payment is made by the physical delivery of money tokens (notes and coins), the payment of money does not involve the transfer of any physical thing, nor even of personal rights and claims. Rather, it involves a series of transactions in which rights and claims are extinguished, to be replaced by new rights and claims in favour of other parties (Colin Bamford, *Principles of International Financial Law* (Oxford University Press, 2nd Ed, 2015) at para 3.28). It is thus inconceivable that Parliament intended to prescribe the specific mechanics of the types of transactions that constitute "remittances" within the MCRBA. Instead, and particularly in light of the AML/CFT object of the MCRBA, the legislative focus was always on the *result* of a transaction: the delivery of funds on behalf of a payor to an intended payee.

96 The application of the licensing framework of "remittance businesses" under the MCRBA to an (upstream) entity which accepts moneys from a payor and then instructs a financial institution to transmit the moneys to the intended payee is seen most clearly in MAS Notice 3001.[37] Paragraph 10.1(b) of MAS Notice 3001 expressly extends, *inter alia*, the customer due diligence requirements under MAS Notice 3001 to a person who "engages a financial institution, whether in Singapore or elsewhere, to facilitate the provision of remittance services." These requirements include understanding the purpose and intended nature of any transactions that it is asked by a customer to undertake, and to monitor its relationships with its customers to ensure that it does not inadvertently facilitate money-laundering or the financing of terrorism.

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[37] Respondent's Bundle of Authorities, Vol 2, at Tab 48 p 1250.

97 It is undisputed that the 605 Remittances involved Chinpo accepting the moneys of various DPRK entities and then engaging the BOC to deliver a total of US$40,138,840.87 to the intended payees via telegraphic transfers. Accordingly, the 605 Remittances constitute "remittances" for the purpose of the MCRBA.

"Business"

98 Section 6 of the MCRBA reads:

> **No person to carry on remittance business without licence**
>
> **6**.—(1) No person shall carry on or advertise that he carries on remittance business unless he is in possession of a valid remittance licence.
>
> (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a fine not exceeding $10,000 for every day during which the offence continues after conviction.

99 Pursuant to s 2(1) of the MCRBA, "remittance business" means "the business of accepting moneys for the purpose of transmitting them to persons resident in another country or a territory outside Singapore". However, the MCRBA does not define the circumstances in which the acceptance of moneys for the purpose of transmitting them to persons outside Singapore will constitute the carrying on of a "business" of remittances that attracts the licensing requirements under s 6 of the MCRBA. Nevertheless, pursuant to s 2(2)(*b*) of the MCRBA, a person is deemed to be carrying on remittance business if he "offers to transmit money on behalf of any person to another person resident in another country".

100 We agree with the submission of the Prosecution and Ms Tung that s 2(2)(*b*) of the MCRBA raises a rebuttable presumption of the carrying on of a remittance business by a person (the "Remitter") who offers to transmit money on behalf of any person to another person outside Singapore. Such a presumption follows from the natural and ordinary meaning of s 2(2)(*b*) of the MCRBA, and we note that Chinpo did not in its written submissions or at the hearing before us advance any argument to the contrary. More importantly, the purpose for which a remittance of moneys is made (*ie*, whether it is for the purpose of a "business" of effecting remittances) is a matter that is purely within the knowledge of the Remitter, who is also best-placed to retrieve any documentary evidence relating to the transactions that he has undertaken. Placing the evidentiary burden on him to prove the purpose of the transaction is thus justified. The observations in *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524[38] ("*Sheagar*") at [38]–[39] on the rationale for s 3 of the Moneylenders Act (Cap 188, 2010 Rev Ed)[39] ("MLA"), which deems a person "who lends a sum of money in consideration of a larger sum being repaid" to be carrying on the business of moneylending, apply with equal force here:

> 38 … [Section] 3 of the MLA operates to shift the burden onto the lender to prove that he was not carrying on the business of moneylending. The rationale for such a presumption was explained by the Privy Council in *Chow Yoong Hong v Choong Fah Rubber Manufactory* [1962] AC 209 at 218 in the following terms:
>
> > *To lend money is not the same thing as to carry on the business of moneylending.* In order to prove that a man is a moneylender within the meaning of the Ordinance, it is necessary to show some degree of *system and continuity* in his moneylending transactions. If he were

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[38] Respondent's Bundle of Authorities, Vol 1, at Tab 30.

[39] Young *Amicus Curiae*'s Bundle of Authorities, Vol 1, at Tab 9.

> left to discharge this burden without the aid of any presumption, a defendant might frequently be in a difficulty. He might have had only one or two transactions with the moneylender and he might find it difficult to obtain evidence about the business done by the moneylender with other parties. Section 3 enables a defendant to found his claim on proof of a single loan made to him at interest, it being presumed, in the absence of rebutting evidence, that there were sufficient other transactions of a similar sort to amount to carrying on of business.
>
> 39 We agree with these observations and add the further point that the scope of the lender's business operations would be a matter within the lender's knowledge. Therefore, the burden placed on the lender would not be an unduly onerous one.
>
> [emphasis added]

101 Just as the MLA prohibits the business of moneylending rather than the act of lending money (*Sheagar* at [30]; *Lena Leowardi v Yeap Cheen Soo* [2015] 1 SLR 581 ("*Lena Leowardi*") at [27]), what the MCRBA prohibits is the *business* of accepting moneys for transmission to persons outside Singapore rather than the mere *act* to that effect. The legislative debates consistently show that the intent of Parliament is to regulate the remittance *industry*, which comprises persons who offer remittances *as a service in its own right* rather than simply *as an incident to their core business*. In other words, the focus of s 6 of the MCRBA is payor-Remitter relationships that have as their primary purpose the making of remittances:

> (a) In 1996, Parliamentarians identified the "remitters" who were subject to the licensing requirements under the MCRBA as the persons who serviced "older Singaporeans who remit money to their relatives in China, India and elsewhere in Southeast Asia" and "foreign workers who remit their earnings to their families overseas" (1996 *Debates* at col 38 (Dr Ow Chin Hock, Member of Parliament for Leng Kee)).

(b) In 2005, the then-Second Minister for Finance described as the "industry" of "remittance houses" those persons who provide as a standalone financial service the delivery of funds to intended recipients outside Singapore. These persons provide an alternative channel (besides banks and large financial institutions) for persons in Singapore to transmit funds to persons outside Singapore (2005 *Debates* at col 1224 (Tharman Shanmugaratnam, Minister for Education and Second Minister for Finance)).

102 At common law, the test for the carrying on of a business is that of the undertaking of the relevant transactions with "some degree of system and continuity" (*Sheagar* at [38] citing *Chow Yoong Hong v Choong Fah Rubber Manufactory* [1962] AC 209 at 218 (see extract at [100] above)). Where the transactions are undertaken only incidentally to the provision of other services, the requisite degree of system and continuity to constitute a "business" would generally not be established (*Subramaniam Dhanapakiam v Ghaanthimathi* [1991] 1 SLR(R) 164[40] at [10] citing *Litchfield v Dreyfus* [1906] 1 KB 584 at 590). This is ultimately a question of fact. In *Subramanian*, a housewife had on multiple occasions lent money to her neighbour, who paid interest on the loans on her own accord at rates decided by herself. Despite the frequency with which the loans had been made, Chan Sek Keong J (as he then was) held that the housewife had not been in the business of moneylending because she had simply lent the moneys as an incident of her relationship with the borrower as friends (at [11]):

> … The loans were friendly loans between two long-time friends. Interest was not demanded but accepted when offered. The interest was not exorbitant and varied in accordance with the

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[40] Appellant's Bundle of Authorities, Tab V.

> generosity of the defendant. The [housewife] did not lend to all and sundry. On these facts, there was no question of the [housewife] being a moneylender as defined in the [MLA]…

103 Similarly, Mr Ng Sheng, a deputy director with the MAS who supervises the money-changing and remittance sector, and who gave evidence on behalf of the Prosecution, accepted that an employer does not require a remittance license to send the wage moneys of his domestic helper to her family abroad.[41] In such a case, the remittance is made only incidentally to the employer-helper relationship, and hence falls outside the scope of the MCRBA.

104 There is however, a distinction between the executing of remittances as an activity related and *incidental* to a core business, and the executing of remittances as an activity unrelated and *secondary* to a core business. Only the former falls outside the legislative ambit of the MCRBA. Parliament has made clear its intention to regulate those persons who offer remittances as a service while engaging in an unrelated "main business" of running a "provision shop" or a "stationery shop" (1996 *Debates* at cols 40–41 (Dr Richard Hu Tsu Tau, Minister for Finance)):

> Dr Ow also wants to know what is the estimated value of the money-changing transactions and the amounts of remittance handled per day. Unfortunately, complete information on the volumes of money-changing and remittance businesses is not available as many of these businesses are small sole-proprietorships and participants are also engaged in other businesses such as provision shop and stationery shop transactions and therefore do not keep proper records of their transactions. This is especially so for the large number of small money-changers.
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> *As for remittance businesses, the volumes vary widely, depending on whether the licensees conduct remittance business as their main business or as a secondary activity.* Based on MAS' inspection of some remittance licensees, MAS has found that

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41 Record of Proceedings, Vol 1 p 102.

> some of them who conduct remittance business as a secondary business handled only about $50,000 worth of remittance business a month. Some medium-sized licensees handle $500,000 worth of remittances monthly while some licensees whose main business is remittance can handle up to $3 million each per month.
>
> [emphasis added]

105 Hence, as with the presumption of the carrying on of moneylending business under s 3 of the MLA, the presumption of the carrying on of remittance business under s 2(2)(*b*) of the MCRBA is rebutted if the Remitter proves that he does not carry on the business of accepting moneys for the purpose of transmitting them to persons outside Singapore. Thus, the general approach to determine whether a person who has accepted moneys for transmission to persons outside Singapore has fallen afoul of s 6 of the MCRBA is as follows (adapted from *Sheagar* at [75] and *Lena Leowardi* at [29]):

(a) The Prosecution must prove that the Remitter was not in possession of a valid remittance business license at the time when he made the remittances in question.

(b) The Prosecution must prove further that the Remitter in making the remittances in question carried on the business of accepting moneys for the purpose of transmitting them to persons outside Singapore. However, if the Prosecution can establish that the Remitter offered to transmit money on behalf of any person to another person resident in another country, it may rely on the presumption contained in s 2(2)(*b*) of the MCRBA to discharge this burden.

(c) The burden then shifts to the lender to prove on a balance of probabilities that he did not carry on the business of accepting moneys for the purpose of transmitting them to persons outside Singapore. This

> can be achieved, *inter alia*, by proving that the remittances were undertaken only as an incident of a main business, but not if the making of the remittances is so unrelated to the main business as to constitute a secondary business.

106 With these considerations in mind, we turn to the 605 Remittances.

The 605 Remittances

107 It is undisputed that Chinpo was not in possession of a valid remittance license when it made the 605 Remittances between 2 April 2009 and 3 July 2013. Accordingly, all that remains to be considered is whether Chinpo in making the 605 Remittances carried on the business of accepting moneys for the purpose of transmitting them to persons outside Singapore.

108 In our view, the presumption under s 2(2)(*b*) of the MCRBA arises to place on Chinpo the burden of proving the purpose of the transactions. Chinpo offered to transmit money on behalf of the DPRK entities to their intended payees outside Singapore. This is particularly clear in an email on 7 January 2013 from Tan to OMM in which he promises to "help your company for inward/outward remittances" by continuing to operate Chinpo despite the decline in the demand for ship agency and ship chandelling services from the DPRK entities that caused Chinpo to operate at a monthly loss of approximately S$8,000.00.[42] But even before that, Chinpo had readily and willingly accepted payments from the DPRK entities of large sums, which far exceeded the amounts that they owed Chinpo for ship agency and ship chandelling. This was

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[42] Record of Proceedings, Vol 6 p 421.

(*cont'd on next page*)

confirmed by Tan in his statement recorded on 13 February 2014 under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed),[43] and is exemplified by an email from Chinpo to "Korea Susan Shipping" ("KSS") in which Chinpo acknowledges receipt of US$156,000.00 from KSS when the debt due from KSS to Chinpo was only US$14,042.35. Thereafter, Chinpo had readily procured the remittance of excess amounts to persons outside Singapore as directed by the DPRK entities, regardless of whether these outward remittances were related to the ship agency and ship chandelling services provided by it. Through its conduct, therefore, Chinpo offered to transmit money on behalf of the DPRK entities to their intended payees outside Singapore. Pursuant to s 2(2)(*b*) of the MCRBA, the evidential burden thus shifts to Chinpo to prove that it did not carry on the 605 Remittances as a business.

109 The Prosecution conceded that it was unclear whether every one of the 605 Remittances had been made as part of a standalone business of funds transmission, rather than as an incident to the ship agency and ship chandelling services carried out by Chinpo. Nevertheless, due to s 2(2)(*b*) of the MCRBA, the burden rests with Chinpo to prove that it had not made the 605 Remittances as part of remittance business. Chinpo never inquired about, and was unfamiliar with, the purposes of the remittances that it made on the instructions of the DPRK entities. Moreover, Chinpo was not involved in many of the underlying contracts that gave rise to the need for the DPRK entities to make the 605 Remittances. As the DJ noted, Hui Tin, one of Tan's daughters who was an accounts executive in Chinpo to whom all staff in the company reported, could not confirm whether many of the 605 Remittances were made for "shipping related" purposes (GD at [71]–[73]):

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[43] Record of Proceedings, Vol 6 p 695 (Question 123).

71 She [*ie*, Hui Tin] was first asked to look at exhibit P3-3 (P47), a remittance to Harvest International (China) Limited. She was referred to the email from OMM which stated 'Pls remit USD 35000 to the attached bank account and let me have the slip.' She agreed that the purpose of the remittance was not stated in the email. However, she claimed that the OMM representative would have informed Chinpo of its purpose but she was unable to remember what was said. She was then asked:

> Q. Does Harvest International have anything to do with shipping? The payee is Harvest International. Do they have anything to do with shipping?
>
> A. He's OMM rep, we believe that is all shipping related.
>
> Q. So, when you say "we believe it is shipping related" because he told you, you assumed it must be shipping related? Is that what you mean?
>
> A. Yes, we have been in business so long, we have to believe what they say. We have no reason not to believe it is -- it is wrong, no reason.
>
> Q. Well, on the face of it, does it appear to have anything to do with shipping?
>
> A. I believe it's shipping related because he – he's done shipping and he handles the other vessels, yes, I believe it is.

72 She was referred to another remittance in P3-3 (pg 51) to Yongsheng (Liaoning) Economic and Trading Co. Ltd. on 4 May 2011 and asked its purpose. She again said that she was unable to recall. She was next referred to a remittance of US$30,000 on 2 August 2011 to Fu Zan Shu (P3-3, pg100). She said that she did not know the payee and was unable to recall the purpose. She was next referred to another remittance to Harvest International (China) Limited (pg 146 of P3-3) for the sum of US$25,000 on 19 October 2011. She was also unable to recall the purpose of the remittance.

73 She was referred to a remittance dated 3 January 2012 to Become Co., Ltd for the sum of JPY 10,800,000 (pg 274 of P3-4). Asked if it had anything to do with shipping, she replied that she did not know. Under cross-examination, she was referred to another remittance of JPY 312,440 dated 12 June 2012 to Become Co., Ltd and a sales agreement (pgs 345-348 of P3-4). She again said that she was unable to recall the

> purpose of the remittance. Lastly, in respect of the remittance dated 15 August 2012 for the sum of JPY500,000 to Makoto Nishida (p 362 of P3-4), she again replied that she was unable to recall what the remittance was for.

110 This lack of interest in and knowledge of the purpose of so many of the 605 Remittances by Chinpo belied its claim that they were all "shipping related". Had all (or even most) of the 605 Remittances truly been related and incidental to the provision by Chinpo of ship agency and ship chandelling services to the DPRK entities, we would expect Chinpo to have been familiar with the purposes for which they were made, and more specifically, the way in which the remittances facilitated its provision of the ship agency and ship chandelling services to the DPRK entities.

111 On balance therefore, we cannot accept the contention that Chinpo undertook the 605 Remittances purely incidentally to its avowed primary business of ship agency and ship chandelling, particularly given the evidence of Chinpo's own expert, Mr Dennis D'Cotta, that it would be "unusual" and "uncommon" for a shipping agent or chandler to, as Chinpo did, hold on to large sums of money for a ship owner.[44] Accordingly, we find that Chinpo is unable to rebut the presumption under s 2(2)(*b*) of the MCRBA that it had been carrying on a "remittance business" for the purpose of s 6(1) of the MCRBA.

112 Indeed, the evidence suggests that Chinpo was blindly receiving moneys from the DPRK entities, and then paying the moneys to their intended payees, in respect of matters unconnected with its ship agency and ship chandelling services. Although Chinpo engaged the BOC to facilitate the 605 Remittances, it had done so in its own name, thereby concealing the identity of the DPRK

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[44] Record of Proceedings, Vol 2 pp 240–241.

entities, which were the true payors. This is the very mischief that the MCRBA seeks to avoid, and which Parliament seeks to address through the licensing regime for remittance businesses under s 6 of the MCRBA.

Monetary gain

113 We are unable to accept the contention that Chinpo must have undertaken the 605 Remittances for the purpose of gain in order to have carried on a remittance business under the MCRBA. Nothing in the MCRBA requires the acceptance of moneys for the purpose of transmission to persons outside Singapore to have been carried out for gain. Moreover, a Remitter is presumed under s 2(2)(*b*) of the MCRBA to have been carrying on a remittance business upon proof of an *offer* by it to transmit moneys, without more.

114 In any event, we agree with the DJ that even if the undertaking of remittances for the purpose of gain is an essential element of a remittance business under s 2(1) of the MCRBA, there is no need for the transactions *per se* to yield a monetary profit. Here, the ship agency and ship chandelling businesses of Chinpo had dwindled due to falling demand for such services from the DPRK entities.[45] It was undisputed that Chinpo in making the 605 Remittances had been motivated by a desire to maintain goodwill with the DPRK entities.[46] Further, as the DJ found, Chinpo had in fact enjoyed monetary gains from its making of the 605 Remittances (GD at [159]):

> … [I]n return for the assistance, [Tan] was able to gain access to funds to make his own investments. It was undisputed that Kim Yu Il granted an interest free loan of more than a million dollars for silver investments to Chinpo. To quote another

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45 Record of Proceedings, Vol 6 p 421.

46 Record of Proceedings, Vol 2 p 371 paragraph 14.

> example, Chinpo made US$9,600 for a purported loan by Kim Yu Il to Samilpo.

115 Accordingly, we uphold the conviction of Chinpo on the MCRBA Charge.

Sentence

116 We agree with the DJ that general deterrence is the main sentencing consideration for the MCRBA Charge. The objective of the system of licensing under the MCRBA is to bring all persons providing remittance services within the ambit of certain minimum legal and regulatory requirements and the supervision of MAS. Licensees are expected to put in place appropriate systems and perform relevant customer due diligence measures to prevent money laundering and terrorist financing.

117 In all, Chinpo performed 605 remittances over a period of about four years, which resulted in the remission of a staggering US$40,138,840.87. This is an offence of an unprecedented volume and over an unprecedented duration in Singapore. The maximum fine of S$100,000 is thus warranted.

Conclusion

118 For the above reasons, we allow the appeal in part. We set aside Chinpo's conviction and sentence on the DPRK Regulations Charge, but affirm the DJ's decision in respect of the MCRBA Charge. We accordingly order that the fine of S$80,000 paid by Chinpo in relation to the DPRK Regulations Charge be refunded.

119 It remains for us to record our deep gratitude to the Young *Amicus Curiae*, Ms Tung, for her comprehensive and cogent written and oral submissions, from which we obtained considerable assistance. We commend her for the diligence and care with which she applied herself in her efforts to assist us as an officer of the court.

Sundaresh Menon	Chao Hick Tin	See Kee Oon
Chief Justice	Judge of Appeal	Judge

Edmond Pereira and Dharinni Kesavan (Edmond Pereira Law Corporation) for the appellant;
Tan Ken Hwee, G Kannan, Ang Feng Qian, and Randeep Singh (Attorney General's Chambers) for the respondent;
Clara Tung (Allen & Gledhill LLP) as Young *Amicus Curiae*.