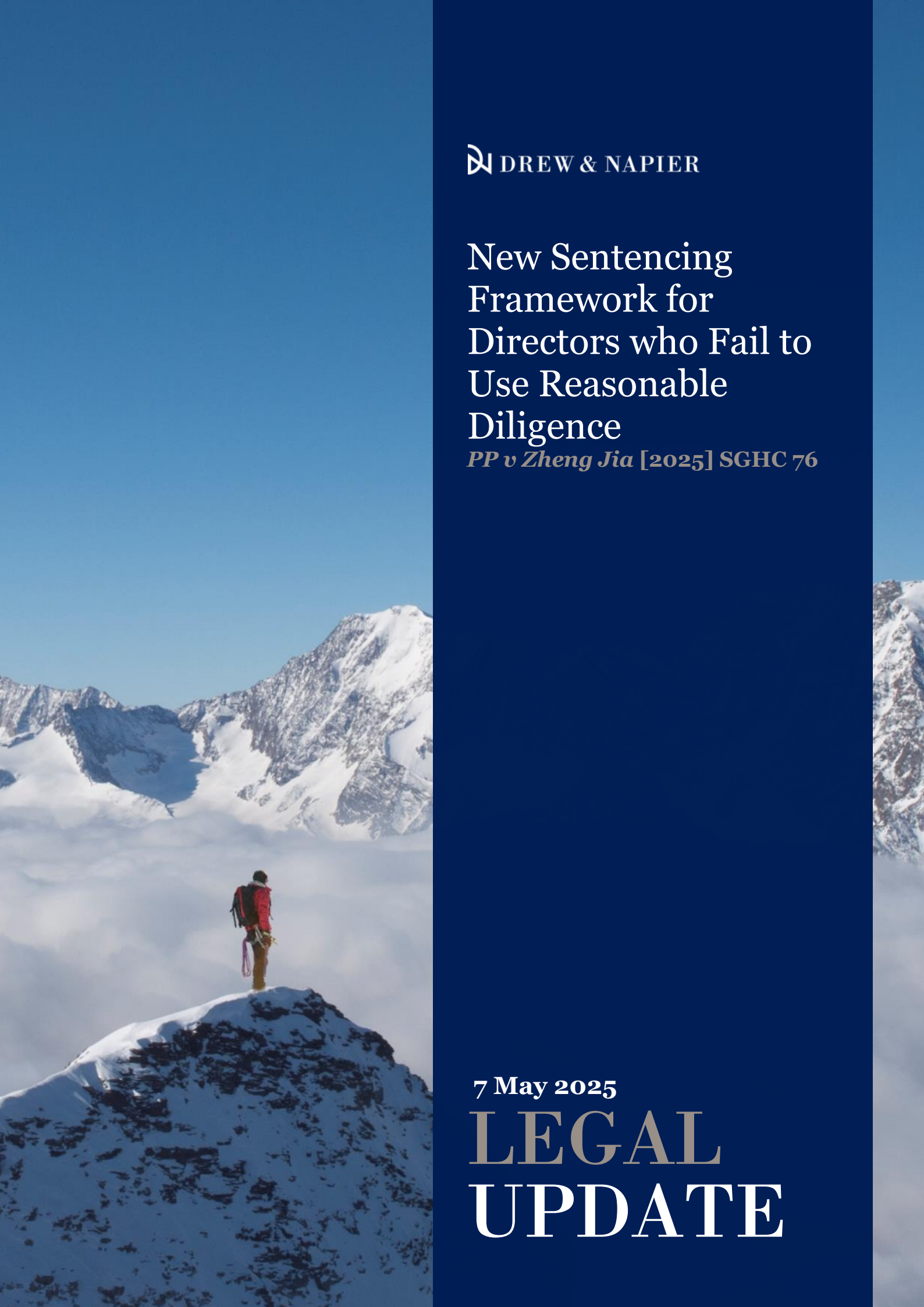




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New Sentencing Framework for Directors who Fail to Use Reasonable Diligence

PP v Zheng Jia [2025] SGHC 76

7 May 2025

LEGAL UPDATE

In this Update

Being a director is a serious responsibility. Breach of the director's duty to use reasonable diligence is a criminal offence, and the High Court in *PP v Zheng Jia* [2025] SGHC 76 has set out a revised sentencing framework where imprisonment is the starting point in certain circumstances.

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INTRODUCTION

A director must at all times act honestly and use reasonable diligence in the discharge of his or her duties. Breach of Section 157(1) of the Companies Act 1967 (“CA”) is a criminal offence.

In *PP v Zheng Jia* [2025] SGHC 76, a three-Judge coram of the High Court set out a revised sentencing framework for breaching the duty to act with reasonable diligence in certain circumstances involving the business of incorporating Singapore companies and acting as locally resident director.

FACTUAL BACKGROUND

In *PP v Zheng Jia*, the accused was a chartered accountant who offered accounting and corporate secretarial services. His business included incorporating companies for foreign clients, acting as locally resident director, and opening bank accounts for those companies. Despite being director, he exercised no control or supervision over those companies’ affairs.

He incorporated or was registered as director of 384 companies. He enlisted another person (Mr Er Beng Hwa) to act as locally resident director and open bank accounts under his instructions.

In 2020, substantial sums of money which were the proceeds of foreign scams were routed through bank accounts of two such companies.

For the 1st Charge, the accused helped a foreign person incorporate Ocean Wave Shela Pte Ltd and open a UOB bank account. A foreign company was then scammed and deceived into transferring USD64,630 to Ocean Wave’s bank account which was transferred out to another foreign bank account the next day.

For the 2nd Charge, Mr Er was registered as director and secretary of Rui Qi Trading Pte Ltd, which opened USD and SGD bank accounts with UOB. These accounts received proceeds of foreign scams against three companies amounting in total to USD2,183,936 and SGD237,120. The charge against the accused was for abetment of this offence.

KEYPOINT

The proper approach is to consider all offence-specific factors holistically in fixing an indicative starting sentence, before this is calibrated to take into account relevant offender-specific factors and the totality principle

THE SENTENCING FRAMEWORK

The District Court applied *Abdul Ghani bin Tahir v PP* [2017] 4 SLR 1153 where the High Court previously held that the starting point for “*purely negligent breaches*” was a fine, and that custodial sentences were reserved for cases where a director breached the duty “*intentionally, knowingly or recklessly*”. The District Court imposed a total fine of SGD8,500.

On appeal, the High Court held that there were difficulties with the approach in *Abdul Ghani* and that the better approach was to consider all offence-specific factors holistically in fixing an indicative starting sentence, which can be calibrated based on relevant offender-specific factors and the totality principle. The High Court set out a revised sentencing framework with a three step approach:

- (1) First, identify all the offence-specific factors;
- (2) Second, situate the offence within the appropriate sentencing band;
and
- (3) Third, calibrate the indicative sentence for offender-specific factors.

Step 1: Offence-specific factors

The High Court set out a non-exhaustive list of offence-specific factors:

- (a) extent of due diligence undertaken;
- (b) efforts made to monitor or review transactions in the company’s bank accounts;
- (c) extent to which the director know or should have known that failure to exercise reasonable diligence could or would enable abuse of the corporate structure;
- (d) duration of offending;
- (e) whether the offending was part of a business or other profit-driven scheme;
- (f) efforts to conceal wrongdoing;
- (g) transnational elements to the offence; and
- (h) the nature and extent of harm that resulted.

Step 2: Sentencing bands

Considering these factors, the offence is then situated within the appropriate sentencing band:

	Number of offence-specific factors	Indicative starting sentence
Band 1	1 - 3	Up to 4 months’ imprisonment
Band 2	4 - 5	5 to 8 months’ imprisonment
Band 3	>6	9 to 12 months’ imprisonment

This second step is not purely an exercise of counting the number of offence-specific factors. The Court must consider the gravity of each factor.

The custodial threshold is presumptively crossed for offences like in this matter where the accused's business model involved him being registered as locally resident director of numerous companies.

Step 3: Calibration

The final step was to adjust the indicative sentence based on offender-specific factors. This includes other offences taken into consideration for sentencing, antecedents, remorse, plea of guilt, restitution and cooperation with the authorities.

APPLICATION TO THE FACTS ON THE APPEAL

For the 1st Charge, the High Court held that the offence fell within Band 2 with an indicative sentence of 5 months' imprisonment:

- (a) the accused was a chartered accountant familiar with the duties of a director, who contemplated that the company and its accounts could be used for illegal purposes;
- (b) the accused took no steps to understand the company's proposed business or to monitor the company's affairs or transactions;
- (c) the accused's consistent dereliction of duty was just one instance of his broader method of providing corporate secretarial services, and he was essentially offering his clients a means to evade Singapore's corporate regulations;
- (d) there was a profit motive involved; and
- (e) the harm was not insubstantial.

On the 2nd Charge, the High Court held that the offence fell within Band 3 with an indicative sentence of 10 months' imprisonment. The same factors applied and in addition:

- (a) the accused hired Mr Er (who was unfamiliar with duties of a director) and his profit driven exploitation of Mr Er's ignorance significantly aggravated his culpability; and
- (b) the harm caused was much greater involving more than USD2m stolen from 3 victims.

At the third step, the High Court calibrated the sentences taking into account the accused's guilty plea and imposed imprisonment terms of 3 months and 7 months respectively, for a total sentence of 10 months imprisonment.

KEYPOINT

The custodial threshold is presumptively crossed in cases where the offender's business model is predicated on being a locally resident director but exercising no control or supervision over the affairs of the company

KEY LEARNING POINTS

The revised sentencing framework is a timely reminder that appointment as a director comes with heavy responsibility. Every director must take their role and duties seriously.

Although the High Court limited the sentencing framework to cases involving professional directors with a business model of providing no oversight over company affairs, Section 157(1) covers a wide spectrum of misconduct.

Potential offences may not rise to the level of consistent dereliction of duty like in *PP v Zheng Jia*, but equally may not be comparable to a director involved in company affairs who makes a negligent error. Instead, most cases will fall somewhere in between.

It is not hard to imagine the *PP v Zheng Jia* framework being extended to cases where the errant director, although not explicitly operating such a business on a large scale, fails to exercise any supervision over multiple companies' affairs.

This is especially since the indicative sentence for Band 1 involving "1-3" offence-specific factors is up to 4 months' imprisonment and the custodial threshold is presumptively crossed for cases like *PP v Zheng Jia* involving professional directors.

Nevertheless, the High Court also highlighted that although the custodial threshold is presumptively crossed, the errant director can still attempt to explain why imprisonment should not be imposed. Good legal representation can emphasise the factual distinctions under steps 1 and 2 of the framework, especially given the importance of assessing the "gravity" of each factor.

Anyone in the business of being a professional director should seek advice on how to better protect themselves.

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