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# What's the Penalty for Breach of Workplace Safety Measures? High Court Sets Out Sentencing Framework for Offences Under WSHA

## Introduction

The Workplace Safety and Health Act ("**WSHA**") aims to improve workplace safety, providing measures that employers and other stakeholders must take to avoid accidents. In particular, Part 4 of the WSHA sets out the duties and offences of persons at the workplace, including employers.

While it is important to know one's role and responsibilities at the workplace in relation to maintaining safety, it is also pertinent to know the likely penalties for the breach of such duties. The WSHA states the maximum fine and/or term of imprisonment for a breach of the Part 4 duties, but the span of sentencing within this range is fairly wide. The uncertainty has been exacerbated by differing sentencing frameworks adopted by the courts.

To address this, the Singapore High Court in *Public Prosecutor v Manta Equipment (S) Pte Ltd* [2022] SGHC 157 has set out a detailed sentencing framework for an employer's breach of duty to ensure its employees' safety and health at work. The Court also set out its position that this framework should apply to all other Part 4 offences.

The Court's decision provides greater clarity and guidance in determining the appropriate sentence for a breach of the WSHA provisions regarding workplace duties. This Update provides a summary of the decision and the key elements of the sentencing framework set out by the Court.

## Brief Facts

In this case, a worker was struck by the suspended jib of a tower crane being erected on a vessel at a shipyard and passed away from his injuries. The jib had not been rigged according to the manufacturer's configuration. The respondent, which was the employer of the deceased, was convicted of a charge under section 12(1) of the WSHA:

"It is the duty of every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of the employer's employees at work."

# Client Update: Singapore

## 2022 JULY

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The District Judge, applying the existing sentencing frameworks and taking into account the culpability and harm involved, imposed a fine of S\$220,000 on the respondent. The Prosecution appealed against the decision, arguing for a heavier fine.

### Holding of the High Court

The Court allowed the Prosecution's appeal against sentence, increasing the fine to S\$250,000.

In reaching its decision, the Court had to consider a number of sentencing-related issues, including the relevant sentencing framework and the applicability of the framework to other Part 4 offences.

#### Sentencing framework

The sentencing framework for Part 4 offences has been in the process of development before the courts, with earlier decisions formulating and refining a sentencing framework for section 12(1) of the WSHA, as well as parallel developments for section 15(4) of the WSHA (persons at work who perform negligent acts which endanger safety or health).

In this decision, the Court considered these frameworks, consolidating the relevant principles to develop the following two-stage sentencing framework:

- (a) **First stage** – The sentencing judge is to determine the level of harm and the level of culpability, in order to derive the indicative starting point according to the benchmarks set out below.

		Culpability		
		Low	Moderate	High
Harm	High	\$150,000 to \$225,000	\$225,000 to \$300,000	\$300,000 to \$500,000
	Moderate	\$75,000 to \$150,000	\$150,000 to \$225,000	\$225,000 to \$300,000
	Low	Up to \$75,000	\$75,000 to \$150,000	\$150,000 to \$225,000

- (b) **Second stage** – The starting sentence should be calibrated according to offender-specific aggravating and mitigating factors. Notably, actual harm caused should no longer be considered an aggravating factor as this would already have been accounted for at the first stage of the analysis.

The Court further set out the factors to be considered when determining level of harm, level of culpability and aggravating and mitigating factors.

# Client Update: Singapore

## 2022 JULY

### Construction & Projects

- (a) **Level of harm** – In this decision, the Court has clarified that the proper approach is to evaluate the level of harm holistically, including both the potential harm and the actual harm. The factors to be considered in assessing potential harm are: the seriousness of the harm risked; the likelihood of that harm arising; and the number of people likely to be exposed to the risk of the harm. Further, where the harm was likely to be death or serious injury, the harm could be considered to be high even though it did not materialise. If death or serious injury did occur, the harm would be graded near the top end of the high range.
- (b) **Level of culpability** – The factors to be considered are: the number of breaches or failures; the nature of the breaches; the seriousness of breaches; whether the breaches were systemic or isolated; and whether the breaches were intentional, rash or negligent.
- (c) **Aggravating factors** – These include: the breach was a significant cause of the harm that resulted; cutting of cost at the expense of the safety of the workers; deliberate concealment of the illegal nature of the activity; breach of a court order; obstruction of justice; poor record in respect of workplace health and safety; falsification of documentation or licences; and deliberate failure to obtain or comply with relevant licences in order to avoid scrutiny by the authorities.
- (d) **Mitigating factors** – These include: high level of cooperation with the authorities; timely plea of guilt; voluntary taken steps to remedy the breach or prevent future occurrences; good health and safety record; and effective health and safety procedures in place.

### Applicability of framework

While the sentencing framework above was formulated for section 12(1) offences, the Court went on to consider whether it should apply to breaches of the rest of Part 4 of the WSHA.

Part 4 sets out the duties in relation to different categories of stakeholders in the workplace, including employers, occupiers, principals, and persons at work. Unless otherwise specified, the contravention of these duties is an offence under section 20 of the WSHA, and is punishable under section 50(a) for offenders who are natural persons, and under section 50(b) for offenders which are bodies corporate.

The Court set out its provisional view that the two-stage sentencing framework outlined above should in principle apply to all Part 4 offences punishable under section 50 of the WSHA.

- (a) Where the offender is a body corporate, the benchmarks set out in the table above should apply.
- (b) Where the offender is a natural person, and for offences for which punishments are otherwise specified in the WSHA, appropriate benchmarks may be considered and developed in future cases. This is because the benchmarks do not take into account the possible sentence of imprisonment.

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### Application

The Court found that there was no reason to depart from the District Judge's findings that the respondent's offence involved moderate culpability and high potential harm. There was also no reason to depart from the mitigating factors identified by the District Judge.

Applying the above framework, the Court found that a fine of S\$250,000 was appropriate.

### Concluding Words

Safety and health in the workplace should be a key priority for employers and all stakeholders. This is codified in the WSHA, which sets out the relevant duties of such stakeholders to maintain a safe workplace.

The WSHA makes it an offence for an identified stakeholder to breach these duties. It is thus important to be aware of the potential sentences which may be imposed for such a breach. In this regard, the Court's decision provides a helpful indicator of the range of likely sentences, taking into consideration the facts of the incident and the offender. This grants a greater degree of certainty for sentencing, as well as provides the relevant factors that may be considered in mitigation.

For further queries, please feel free to contact our team below.

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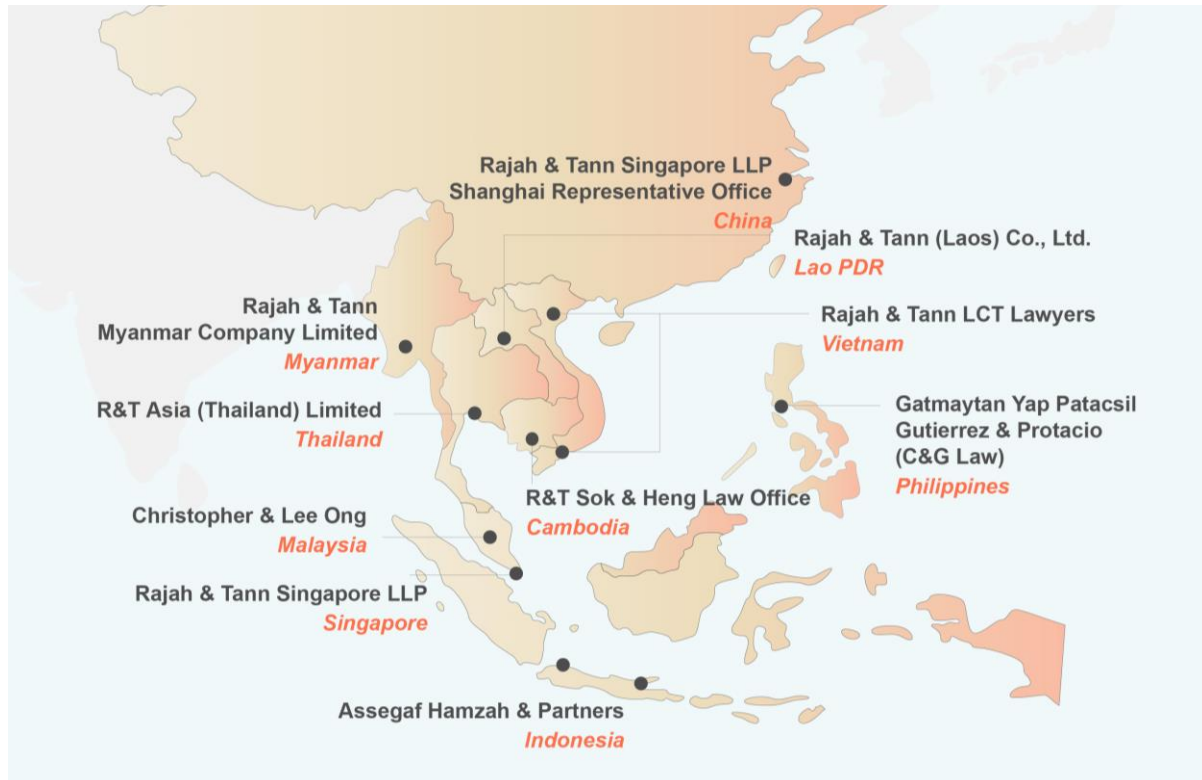
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