

IN THE MATTER OF

A Complaint made under section 34(1)(A) of the Professional Accountants Ordinance (Cap. 50) (the “**PAO**”)

BETWEEN

The Registrar of the Hong Kong Institute
of Certified Public Accountants

COMPLAINANT

AND

Cheng Hong Cheung (A05783)
Chan Shek Chi (A22613)
Cheng & Cheng Limited (M0035)

1st RESPONDENT
2nd RESPONDENT
3rd RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants (the “**Disciplinary Committee**”)

Members: Ms. Lam Ding Wan, Catrina (Chairman)
Ms. Nadine Lai
Mr. Fung Chi Man
Ms. Leung Chi Ying, Kathy
Mr. Chow, Dennis Chi In

ORDER AND REASONS FOR DECISION

A. Introduction and background

1. The complaints against the 1st Respondent, Mr. Cheng Hong Cheung (“**Mr. Cheng**”), the 2nd Respondent, Mr. Chan Shek Chi (“**Mr. Chan**”), and the 3rd Respondent, Cheng & Cheng Limited (“**C&C**”) in the present case arise out of C&C’s audit of the consolidated financial statements of First China Financial Network Holdings Limited (currently known as Sinofortune Financial Holdings

Limited) (“**Company**”) and its subsidiaries (collectively, “**Group**”) for the year ended 31 December 2014 (“**Financial Statements**”). C&C expressed an unmodified auditor’s opinion on the Financial Statements. Mr. Cheng was the engagement director and Mr. Chan was the engagement quality control reviewer (“**EQCR**”). The relevant auditor’s report stated that the audit was conducted in accordance with the Hong Kong Standards on Auditing.

2. The Company was incorporated in the Cayman Islands and its shares are listed on the GEM of the Stock Exchange of Hong Kong (Stock Code: 08123). At the relevant time, the Group was engaged in, among other businesses, research, exploration and development of the student network project and the electronic student card.
3. In July 2014, the Group acquired Shenzhen Star Technology Co., Ltd., a PRC company principally engaged in manufacturing and selling of smart card devices (“**Product**”) for schools in the PRC (“**Acquisition**”). The Product was designed as a safety product for schools and parents to locate and communicate with students.¹
4. The purchase consideration for the Acquisition was settled partly in cash and partly by issuing 350 million shares in the Company at HK\$0.30 each, of which 200 million shares (“**Second Batch Consideration Shares**”) were deposited into an escrow agent and would be released to the vendors should the agreed profit target be met. As part of the Acquisition, the intangible assets arising from the acquired business (comprising two components, namely (i) Software and (ii) Customer Relationships in respect of the Product) (“**Intangible Assets**”) were recognized by the Company.²
5. On 11 September 2019, the Financial Reporting Council (“**FRC**”) referred a report of the Audit Investigation Board (“**AIB**”) to the Hong Kong Institute of Certified Public Accountants (“**Institute**”) pursuant to section 9(f) of the Financial Reporting Council Ordinance (Cap 588). The AIB found irregularities in C&C’s audit in relation to the Acquisition.
6. By letter dated 12 June 2020, the Complainant made two Complaints (“**Complaint Letter**”). The First Complaint relates to C&C and Mr. Cheng. The Second Complaint concerns Mr. Chan (as the EQCR). The particulars of the Complaints are set out in Section B below.

¹ Joint Submissions on Sanctions and Costs, §3.

² Joint Submissions on Sanctions and Costs, §4.

7. The Notice of Commencement of Proceedings was issued on 26 August 2020. The Complainant's Case was filed on 30 September 2020. The Respondent's Case was filed on 16 December 2020. The Complainant filed its Reply on 7 January 2021, and the Respondents filed their Reply on 19 February 2021. The parties filed their respective Checklists on 5 March 2021.
8. The substantive hearing of the present disciplinary proceedings was originally scheduled to be heard on 30 November, 1 and 2 December 2021.
9. By letter dated 9 November 2021, the Complainant informed the Disciplinary Committee ("**Committee**") constituted to deal with this matter that the Respondents have agreed to accept the Complainant's Complaints and that they have no objection in principle to the Complainant's suggested sanctions. In the circumstances, the parties jointly applied to vacate the substantive hearing and requested for directions to be made for the filing of submissions on sanctions and costs.
10. On 10 November 2021, the Committee directed the parties to file a joint statement confirming the Respondents' admission to the facts and complaints set out in the Complaint Letter and gave directions for the filing of written submissions on sanctions and costs.
11. Pursuant to the Committee's directions, on 17 November 2021, the parties filed identical Joint Statements signed by the Complainant and Respondents. In the Joint Statements: (i) C&C and Mr. Cheng confirmed that they admitted to the First Complaint and (ii) Mr. Chan confirmed that he admitted to the Second Complaint, save that all Respondents did not admit to part of the complaint on the valuation of the Software which was no longer pursued by the Complainant.³ Subject to this, the Respondents did not dispute the facts set out in the Complaint Letter.
12. The parties filed Joint Submissions on Sanctions and Costs on 15 December 2021.

B. The Complaints

13. The Complaints as particularised in the Complaint Letter are as follows:-

First Complaint

- (1) Section 34(1)(a)(vi) of the PAO applies to Mr. Cheng and C&C in that they failed or neglected to observe, maintain or otherwise apply professional standards in auditing the consideration payable and intangible assets acquired pertaining to the Acquisition.

³ Complainant's Reply dated 7 January 2021, §§57-60.

Second Complaint

- (2) Section 34(1)(a)(vi) of the PAO applies to Mr. Chan in that he failed or neglected to observe, maintain or otherwise apply a professional standard in carrying out an engagement quality control review in the audit.
14. The relevant auditing standards applicable to the Complaints are:
- (1) First Complaint:
- (a) Hong Kong Standard on Auditing (“HKSA”) 200 *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Hong Kong Standards of Auditing*
 - (b) HKSA 500 *Audit Evidence*
 - (c) HKSA 540 *Auditing Accounting Estimates, Including Fair Value and Accounting Estimates, and Related Disclosures*
 - (d) HSKA 620 *Using the Work of an Auditor’s Expert*
- (2) Second Complaint:
- (a) HKSA 220 *Quality Control for an Audit of Financial Statements*

C. Facts and circumstances in support of the Complaints

15. The factual bases for the Respondents’ admission of the Complaints are stated in the Joint Submissions on Sanctions and Costs, and are reproduced in Sections C1 and C2 below.
16. The parties are agreed that the key question for the present disciplinary proceedings is whether the Respondents made sufficient assessment and obtained sufficient appropriate audit evidence in support of the accounting treatment of the Second Batch Consideration Shares and the valuations of the Intangible Assets.

C1. First Complaint

Issue 1: The Classification of the Second Batch Consideration Shares

17. This issue concerns whether the Second Batch Consideration Shares should be classified as equity or liability under the Hong Kong Accounting Standard (“HKAS”) 32 *Financial Instruments: Presentation*.

18. Paragraph 11 of HKAS 32 provides that a contract is a financial liability if it is “*a non-derivative for which the entity is or may be obliged to deliver a variable number of the entity’s own equity instruments*”, otherwise it should be treated as an equity.
19. The Respondents concurred with the Company’s treatment of the Second Batch Consideration Shares as “equity”, following discussions with the Company’s management (and its legal advisor) and on the basis that (i) a fixed number of shares (200 million shares) had already been delivered to the escrow agent (and all fully paid at the agreed consideration), (ii) there was some evidence (described further below) on whether the profit targets would be met, and (iii) the vendors had the option to purchase the remaining shares in cash should the profit targets not be met. In the event the profit targets not being met (resulting in a shortfall) and the Company repurchasing the remaining shares, the shortfall would be accounted for as a new transaction separately.
20. The Respondents accept the Complainant’s position that the Second Batch Consideration Shares should have been accounted for as “liability” from the outset because the number of Second Batch Consideration Shares to be released to the vendors should be considered as “variable” as the number of shares might be reduced in proportion to any shortfall if the profit targets were not met.

Issue 2: Assessment of reasonableness of sales forecast

21. For the purposes of reviewing and assessing the appropriateness of the value of the Second Batch Consideration Shares and the value of the Intangible Assets, the Respondents assessed various sales forecasts of the acquired business.
22. The key procedures (and assessment made) by the Respondents on those forecasts include:⁴
 - (1) Assessing a 78-page Feasibility Study Report which was prepared by an external consultant commenting on the feasibility of the Company’s business plan for the Product;
 - (2) Reviewing the agreements signed with agencies/distributors in different provinces for selling the Product (some of which were exclusive arrangements);
 - (3) Assessing the PRC Central Government’s initiatives/reforms to enhance student safety and their implications on future sales and demand for the Product;

⁴ A full list is set out in paragraph 22 of the Respondents’ Case.

- (4) Assessing the soft launches of the Product and the “trial runs” by local governments including performance reviews on the Product; and
 - (5) Reviewing the certificate of good quality issued by the China Quality Certification Center in respect of the Product.
23. Notwithstanding the above, the Respondents accept the Complainant’s complaint that the evidence and assessment above still did not sufficiently support the forecast as the acquired business was a new business and there was little track record for the Product. As such, more evidence was required on the risks facing this new business (including market competition and challenges of selling a new product to schools in the PRC).

Issue 3: Valuation of Intangible Assets - Software

24. As noted in paragraph 4 above, the Intangible Assets comprise two components, namely, Software and Customer Relationships.
25. The value of the Software (being the software used for the Product) was approximately HK\$20.9 million (approximately 8.5% of the total value of the Intangible Assets).
26. The Respondents admit that their audit procedures in relation to management’s use of the replacement cost method and the assumption of a 10-year useful life were insufficient as more inquiries and assessment should have been made by the Respondents to challenge the appropriateness of the method and assumptions.

Issue 4: Valuation of Intangible Assets – Customer Relationships

27. The “Customer Relationships” component of the Intangible Assets related to the contracts and cooperation agreements entered into between the Group and certain agencies in the PRC for selling the Product.
28. The most important assumption underlying the valuation of the Customer Relationships was the forecasted sales. This is dealt with at paragraphs 21 to 23 above.
29. Another significant assumption related to the useful life of the Customer Relationships. The Company adopted an indefinite useful life of the Customer Relationships (with which the Respondents concurred at the relevant time), which means it was assumed that there was no foreseeable limit to the period over which Customer Relationships could generate cash flow.

30. The Respondents came to this view based on the following assessment and evidence:⁵
- (1) The long term contracts signed with the agencies/distributors with no termination dates, renewal clauses or termination clauses, and those contracts were not for one-off transactions;
 - (2) The sales commitments made by the agencies/distributors;
 - (3) The market size for the Product (backed up by information showing market demand);
 - (4) The long term nature of end-user customers;
 - (5) The long term nature and competitive edge of the product; and
 - (6) The relatively low cost of maintaining the relationship with the agencies/distributors.
31. Notwithstanding the above, the Respondents accept the Complainant's complaint that the above factors still did not sufficiently support the assumption of the Customer Relationships having an indefinite useful life as more evidence was required having regard to risk factors including that the contracts were in the form of cooperation agreements with no committed transaction volume, and that the Product was new with little track record. This also means that the forecast which included a terminal value (as opposed to having a finite period) was not supported by sufficient evidence. The Respondents also accept the Complainant's complaint that there was insufficient audit evidence gathered on some other assumptions underlying the forecast, including the rates of return of assets and the discount rate.

C2. Second Complaint

32. Mr. Chan (as the EQCR) considered the key evidence obtained by the engagement team, in particular its assessment and evaluation on the accounting treatment of the Second Batch Consideration Shares and the significant assumptions in the valuations of the Intangible Assets, before concurring with the engagement team's conclusions.
33. However, Mr. Chan admits that the above issues included in the First Complaint were significant and judgmental issues and he did not make adequate evaluation on the engagement team's judgments and should have requested additional procedures to be performed by the engagement team (including those set out in paragraphs 20, 23, 26 and 31 above).

⁵ A full list is set out in paragraph 66 of the Respondents' Case.

C3. Conclusion

34. Based on the facts set out in the Complaint Letter which are not disputed by the Respondents (save for part of the complaint on the valuation of the Software no longer pursued by the Complainant as detailed in paragraph 11 above), as well as the factual bases for the Respondents' admission of the Complaints set out above, the Committee is satisfied that the First Complaint has been established as against Mr. Cheng and C&C, and that the Second Complaint has been established as against Mr. Chan.

D. Sanctions and costs

35. The Complainant and the Respondents have agreed to the following proposed sanctions and costs order for the Committee's consideration:
- (1) C&C be reprimanded and pays a fine of HK\$200,000;
 - (2) Mr. Cheng be reprimanded and pays a fine of HK\$100,000;
 - (3) Mr. Chan be reprimanded and pays a fine of HK\$80,000;
 - (4) The Respondents jointly pay the Financial Reporting Council's, the Institute's and the Committee's costs in the total sum of HK\$805,616.
36. The Committee considers the proposed sanctions and costs orders are appropriate and proportionate in the circumstances of this case, taking into account, in particular, the following matters:
- (1) Bearing in mind the issues and the nature of the deficiencies involved, the Committee considers this case falls within the "moderately seriously" category under paragraph 6.1 of the *Guidelines to Disciplinary Committee for Determining Disciplinary Orders* warranting the sanction of a reprimand, the imposition of a financial penalty and an order for payment of costs and incidentals.
 - (2) The Company is a listed company and the audit work in the present case affects the investing public. The public is entitled to expect that practising accountants discharge their duties and conduct their work to the highest standards of probity, independence and competence. If public confidence is shaken, then the price to be paid by the profession as a whole will be very high.

- (3) There was no fraud, dishonesty, professional misconduct or personal gain involved in the breach and it was inadvertent. The case also did not involve any ethical issues.
- (4) The Complainant accepts that the Respondents genuinely believed at the time that sufficient appropriate audit evidence was obtained with respect to the above issues, and the Complaints involved professional judgment issues.
- (5) There was no indication that the breach caused actual monetary loss to any third party (such as the Company). The Committee does not, however, consider this to be a strong mitigating factor, having regard to the public interest at stake. The potential loss of investor confidence in the accuracy of audits of publicly listed companies remains a serious concern, and the sanction should reflect this.
- (6) The Complaints made against the Respondents relate solely to one year of audit and are not recurring.
- (7) The Respondents admitted the Complaints and have acted reasonably throughout the AIB's investigation and the Institute's disciplinary proceedings, including working with the Complainant on the Joint Submission on Sanctions and Costs. Although the Respondents' admission was not made at the earliest opportunity but after the filing of the parties' Checklists, it has nevertheless obviated the need for a contested oral hearing and led to a considerable saving of time and costs.
- (8) The regulatory records of C&C, the unblemished disciplinary record of Mr. Cheng, and the existence of one prior published regulatory action in the form of a settlement against Mr. Chan relating to a different audit issue.

37. Accordingly, the Committee makes the following orders:

- (1) Mr. Cheng, C&C and Mr. Chan be reprimanded under section 35(1)(b) of the PAO;
- (2) C&C (3rd Respondent) pays a penalty of HK\$200,000 under section 35(1)(c) of the PAO;
- (3) Mr. Cheng (1st Respondent) pays a penalty of HK\$100,000 under section 35(1)(c) of the PAO;
- (4) Mr. Chan (2nd Respondent) pays a penalty of HK\$80,000 under section 35(1)(c) of the PAO;

- (5) The Respondents jointly pay the costs and expenses of the Financial Reporting Council, the Institute and the Committee in the agreed sum of HK\$805,616 under sections 35(1)(d)(ii) and 35(1)(iii) of the PAO.

Dated: the 1st day of April 2022

Ms. Lam Ding Wan, Catrina
Chairman

Ms. Nadine Lai
Member

Ms. Leung Chi Ying, Kathy
Member

Mr. Fung Chi Man
Member

Mr. Chow, Dennis Chi In
Member