

IN THE MATTER OF

Complaints made under section 42C(1) of the
Professional Accountants Ordinance (Cap. 50)

BETWEEN

An Investigation Committee of HKICPA Complainant

AND

HLB Hodgson Impey Cheng (#0495) 1st Respondent

Mr. Cheng Chung Ching, Raymond (F04820) 2nd Respondent

Mr. Lai Tak Shing, Jonathan (F05358) 3rd Respondent

Disciplinary Committee:

Mr. Shum, Sze Man, Erik Ignatius (Chairman)

Mr. Fung, Wei Lung, Brian

Ms. Yu, Ho Wun, Grace

Mr. Chan, Wai Tong, Christopher

Dr. Kam, Pok Man

Date of Decision on Sanctions and Costs: 6 April 2018

DECISION ON SANCTIONS AND COSTS

Introduction

1. The Committee delivered its Decision as to liability on 19 January 2018. In the last part of the Decision after finding that all 12 Complaints were proved against the respective Respondents, the parties were directed to file their written submissions on sanctions and costs. The Complainant filed its written submissions and statement of costs dated 30 January 2018 whereas the Respondents filed their written submissions dated 23 February 2018.

2. The following is the unanimous decision of the Committee on sanctions and costs.

Sanctions

3. The Committee has considered all the submissions made by the parties and does not propose to set out herein all the submissions made. It suffices to state that generally the parties do not dispute the proper approach of the Committee in deciding the appropriate sanctions as set out in paragraphs 2 to 10 of the Complainant's written submissions. The Complainant submitted that the present case falls within either the "serious" or "very serious" categories while the Respondents submitted that the case should fall within the "moderately serious" category. As against the 2nd and 3rd Respondents the Complainant suggested that the sanction should be "cancellation of their practising certificates and/or temporary removal from the Register" whereas the sanction against each of the 1st, 2nd and 3rd Respondents should be a financial penalty. The

Respondents submitted that the appropriate sanctions should be firstly, an order of reprimand against all Respondents and secondly, a global fine of \$400,000 to be distributed as follows: \$200,000 against the 1st Respondent; \$75,000 against the 2nd Respondent and \$125,000 against the 3rd Respondent.

4. The Committee acknowledges that every case of professional misconduct is different on facts and circumstances such that the previous decisions as to sanctions imposed are of reference value only. The Committee agrees with the Complainant's submission that the Committee has a wide discretion in deciding on appropriate sanctions and the Respondents' submission as reflected in the Court's decision in Registrar of the Hong Kong Institute of Certified Public Accountants v Leung Kam Man Victor (CACV 37/2016, unreported judgment on 17 January 2017) that the Committee has a margin of discretion in deciding the appropriate sanction to maintain the standards of the profession.
5. In deciding the appropriate sanctions to be imposed the Committee agrees that although there were 12 disciplinary charges established in which they could be classified into three broad categories as stated in the Decision on liability, some of the charges can be viewed as connected to one another. Charges 1 and 2 are connected; charges 3 and 4 are connected; charges 5 and 6 are connected; charges 7 and 8 are connected; charges 9 and 10 are connected; charges 11 and 12 are connected. In each of the above pairs of charges the former charges are substantive in nature in that they relate to the Respondents' failure to meet or breaching the

professional standards or rules whereas the latter charges in each pair relate to the corresponding failure to properly document matters in providing evidence in the working papers in respect of the same matter of the former charges. The Committee considers that it is not appropriate to increase the gravity of each pair of charges in any significant way due to the presence of the latter charges. Further, the total number of charges though on record is 12 (against different Respondents for different charges except the 1st corporate Respondent who faces all 12 charges), the essence of the charges against each Respondent for the purpose of sanction may be considered to be not much different from one half of the recorded charges, i.e. six pairs of charges against the 1st Respondent; three pairs of charges against the 2nd Respondent (for one year of work in the 2003 report); three pairs of charges against the 3rd Respondent (for two years of work in the 2004 and 2005 reports).

6. The Committee also notes that the charges spread over three years of work relating to Tiffit in 2003, 2004 and 2005 of the Respondents. The 1st corporate Respondent was responsible for all three years whereas the 2nd Respondent was responsible for work for the report of 2003 and the 3rd Respondent was responsible for work for the reports in 2004 and 2005. In that above sense the culpability of the 3rd Respondent is more than that of the 2nd Respondent.
7. By reason of the fact that with two different partners conducting and signing the compliance report of one client in respect of which

compliance assurance work not meeting the then applicable professional standards was identified, it suggests a likely lack of proper supervision and control over work quality within the 1st Respondent which is evidently not a one-off lapse in work quality control. However, on the other hand the case concerns only one client of the 1st Respondent and nothing had come to the attention of the Committee based on various submissions received which suggest that the defects in the 1st Respondent practice in the present case pertain to a more wide spread issue in 1st Respondent's practice.

8. It is also true, as suggested by the Respondents, that the submissions and related documents have not highlighted any instances of financial loss suffered by any clients of Tiffit as a direct result of the sub-standard work of the Respondents. In the absence of any evidence to the above effect the Committee members focused their deliberation on the Complainant's submission that the work of the Respondents has undermined the integrity and reputation of the accounting profession, as well as public and stakeholders and investors' confidence in professional accountants' work which is one of the cornerstones of economic success of Hong Kong's business community, particularly that of the finance sector in Hong Kong. The above underpins the main concerns of the Committee in relation to the established charges.
9. The Committee agrees with the Respondents' submission that there is no evidence of ethical issues, dishonesty or is there any evidence indicating deceit or undue personal gain involved in the present

case. The essence of the nature of the charges has been set out in the earlier Decision of the Committee in the Decision on liability. The conduct of the Respondents, which can primarily be attributable to a lack of competence to perform the compliance-reporting work in accordance with the applicable professional standards, is also summarized in paragraph 12 of the Complainant's written submissions on sanction, to which the Committee agrees. The above, which represents the sting of the conduct of rendering sub-standard work in the Respondents' capacity as professional accounting firm and accountants, is quite different from conduct which implicates integrity, lack of good faith and dishonesty.

10. Whether the professional charges in the total amount of \$140,120 for the three years of work which can be viewed as modest and might constitute a factor attributable to the lower work quality, the Committee does not consider that it would in any event vindicate the related charges. The above fee revenue received by the Respondents is, however, a factor to be taken into account by the Committee on sanctions in that it was not excessive.
11. The Complainant refers to a number of factors pertaining to the Respondents' and their legal representatives' conduct in the course of the investigation conducted by the Institute over the years for the Committee's consideration. They include the late introduction of the Additional Documents despite more than sufficient opportunity for the Respondents to rely on them for years during the investigation period when the Respondents were asked to

explain (paragraph 13 of the Complainant's written submissions); the Respondents' failure to make any admissions of the charges during the investigation and at trial (paragraph 22 of the Complainant's written submissions); the Respondents were highly obstructive in the course of the investigation. More specifically, steps taken by the Respondents included the issue of a writ by the 1st corporate Respondent against members of the Investigation Committee on 11 September 2015 in HCA 2107 of 2015 alleging breach of duty owed by the defendants to the 1st Respondent though such writ was never served on members of the Investigation Committee but was sent by the 1st Respondent's solicitors to the Council on 14 September 2015. Finally the writ was discontinued. Such conduct of the 1st Respondent was said by the Complainant to be an attempt to intimidate the Investigation Committee to withdraw its findings and conclusion on the eve of the Council's deliberation of the case (paragraph 23 of the Complainant's written submissions). These acts of the Respondents are in the view of the Committee unreasonable and unrespectful to the Council's decisions on the investigation proceedings and unwarranted.

12. The Committee agrees that the above conduct of the Respondents shows that the Respondents had no insight of their sub-standard professional work, refused to make any admission and persisted in unmeritorious defence and conducted their defence relying on very lately introduced Additional Documents which were suspicious. However, the Committee considers that the Respondents do have the right not to admit to the disciplinary charges both in the course

of investigation and at the disciplinary proceeding. The sanctions to be imposed should be based on the charges themselves and their nature and consequences, but not on the conduct of the Respondents after the commission of the disciplinary charges back in 2003 to 2005. The said conduct, however, would be taken into account when the Committee considers the costs order.

13. Further, the conduct of the 1st Respondent as to the issue of the Writ and how it made use of it against members of the Investigation Committee is particularly deplorable in the view of the Committee. Again, however, the Committee will similarly not take that incident into account in deciding sanctions but will take that conduct into account when it comes to imposing any costs order against the 1st Respondent.
14. The Committee takes into account the fact that none of the Respondents have any previous disciplinary record, and voluntary services the 2nd and 3rd Respondents rendered to society and the profession, and that they are breadwinners of their respective families, in considering mitigation factors.
15. Lastly, the Committee takes into account also the totality principle having regard to individual charges established against each Respondent, the gravity of individual charge and cumulative effect of them and the ultimate sanction to be imposed on each of the Respondents.

16. Having considered and balanced all the above matters and the submissions of parties the Committee finds that the case against the Respondents falls within the category of “serious” and towards its lower end. It is set out in details in the disciplinary proceedings papers of the Institute that the sanctions to be imposed under this category are (a) reprimand, and/or (b) financial penalty up to the maximum of \$500,000 for each Respondent; and/or cancellation of practising certificate; and/or (c) temporary removal from the Register, and this is not a point in dispute between the parties.
17. The Committee, having considered all the previous disciplinary decisions referred to by the parties and the reasons given hereinabove, concludes that the appropriate sanctions to be imposed on the Respondents are as follows,

Against the 1st Respondent,

“Reprimand and a financial penalty of \$400,000”.

Against the 2nd Respondent,

“Reprimand and a financial penalty of \$300,000”.

Against the 3rd Respondent,

“Reprimand and a financial penalty of \$300,000”.

Costs

18. The Committee finds that there is no reason not to impose an order for the Respondents to pay costs to the Complainant and for the investigation and the present disciplinary proceedings according to

the usual rule of costs to follow the event. The Respondents do not submit otherwise but dispute various items in the Statement of Costs submitted by the Complainant and the overall total costs.

19. The Committee in principle agrees with paragraphs 50.4 and 50.5 of the Respondents' written submissions. For the costs relating to the witness statement which is not used (and the witness did not give evidence at trial) should be deducted from the Complainant's costs though the amount would not be much in the context of the total costs in the Statement of Costs. The legal proceeding of the said Writ issued by the 1st Respondent was withdrawn by consent of the parties and no demand or application was made by the Complainant there and then to the Court as to costs. Such costs, if desired by the Complainant to be recovered from the 1st Respondent, should have been made to the Court in the legal action and should not be made subsequently in the present disciplinary proceeding or any other proceeding. Therefore, the amount of \$141,088.50 (item D in the Statement of Costs) is deducted from the total costs of \$4,003,360.91 making a balance of \$3,862,272.41.

20. The Committee disagrees with the submissions of the Respondents made in paragraphs 50.1, 50.2 and 50.3 of the Respondents' written submissions. In this regard the Committee refers to paragraphs 11 to 13 hereinabove and finds that the Respondents' conduct in the course of the investigation and disciplinary proceeding has resulted in the incurrence of costs of the Complainant and necessitated the engagement of huge amount of manpower and work including in-house and legal professional

personnel and Counsel, which is necessary in light of the uncooperative attitude of the Respondents and the maintenance of unmeritorious defence throughout. The introduction of the Additional Documents before trial and the pertaining evidence given by the 3rd Respondent which were rejected by the Committee and the Writ issued by the 1st Respondent not only failed to assist the Respondents' defence, they only go to show that the Respondents failed to appreciate where and how they failed in meeting the professional standards in their work conducted for their client nor the negative implications for the profession as a whole. The attitude and conduct of the Respondents gave rise to various issues which resulted in the processes of investigation and disciplinary proceeding taking years to be completed, and hence huge costs incurred on both sides.

21. The Committee finds that there is no serious duplication of work required from the Complainant as a result of unreasonableness in the items complained of by the Respondents in the above paragraphs.

22. Upon reviewing the whole of the Statement of Costs and taking a broad brush approach without going into detail of the items of expenses, the Committee members have unanimously agreed upon making a discount of 20% out of the said reduced sum of \$3,862,272.41 resulting in the sum of \$3,089,818, rounded to \$3,000,000.00, which is the total costs which the Respondents should pay jointly and severally as costs.

23. In the premises, the Committee makes an order in terms of paragraphs 17 and 22 hereinabove.

24. It remains for the Committee to thank Counsel for the Complainant and Counsel for the Respondents for their assistance in the proceedings.

Mr. Shum, Sze Man, Erik Ignatius
Chairman

Mr. Fung, Wei Lung, Brian
Member

Mr. Chan, Wai Tong, Christopher
Member

Ms. Yu, Ho Wun, Grace
Member

Dr. Kam, Pok Man
Member

Ms. Sara Tong, Counsel instructed by solicitors Messrs. Reed Smith
Richards Butler, for the Complainant

Mr. Johnny Ma, Counsel instructed by solicitors Messrs. Smyth & Co,
for the 1st, 2nd and 3rd Respondents