

IN THE MATTER OF

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

BETWEEN

The Registrar of the Hong Kong Institute
of Certified Public Accountants

COMPLAINANT

AND

Mr. Ang Wing Fung (A24170)
Mr. Chan Kam Wah (A16790)

1st RESPONDENT
2nd RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants

Members: Ms. CHAN Yiting, Bonnie (Chairman)
Mr. CHAU Chi Chung
Mr. CHOW Lap San, Edward
Mr. MORRISON, Kenneth Graeme
Mr. SHEN Ka Yip, Timothy

ORDER AND REASONS FOR DECISION

1. This is a complaint made by the Registrar (the “**Complainant**”) of the Hong Kong Institute of Certified Public Accountants (the “**Institute**”) against Mr. Ang Wing Fung (“**Ang**” or the “**1st Respondent**”) and Mr. Chan Kam Wah (“**Chan**” or the “**2nd Respondent**”) (collectively, the “**Respondents**”).
2. The particulars of the Complaint as set out in a letter from the Registrar to the Council of the Institute dated 5 March 2021 (the “**Complaint**”) are as follows:

BACKGROUND

- (1) W. Falcon Asset Management (Asia) Limited (“**Falcon**”) was a licensed corporation under Hong Kong Securities and Futures Ordinance (“**SFO**”) to carry on regulated activities.

- (2) In February 2019, the Securities and Futures Commission (“SFC”) revoked the licence of Falcon due to its window-dressing of liquid capital and other failures, including providing the SFC with false or misleading information in its licence application and financial returns between June 2014 and June 2017.
- (3) Later in December 2019, the SFC banned Ang, a former director of Falcon, and Chan, a former chief financial officer and company secretary, from re-entering the financial industry for life and three years, respectively, in connection with their roles in window-dressing the liquid capital of Falcon. The SFC found that Ang was the mastermind of the window-dressing scheme and its operation was facilitated by Chan. The Respondents also failed to notify the SFC of Falcon’s insufficient liquid capital and Ang failed to notify the SFC of his resignation as a director.
- (4) The SFC considered that the misconduct of Falcon was a result of Ang’s and Chan’s consent or connivance on their part as members of senior management. Their failures cast serious doubt on their ability to carry on regulated activities competently and call into question their fitness and propriety to be licensed by the SFC.
- (5) Since both the Respondents are members of the Institute, the SFC referred the matter regarding its disciplinary action against Ang and Chan to the Institute for action.

THE COMPLAINTS

Complaint 1

- (6) Section 34(1)(a)(vi) of the PAO applies to Ang and Chan for their failure or neglect to observe, maintain and otherwise apply sections 100.5(a) and 110 of the then applicable Code of Ethics for Professional Accountants (“COE”) in that they breached sections 383(1) and 384(1) of the SFO by providing materially false or misleading information in Falcon’s licence application and monthly financial returns (“FRs”) submitted to the SFC.

Complaint 2

- (7) Section 34(1)(a)(vi) of the PAO applies to Ang and Chan for their failure or neglect to observe, maintain and otherwise apply sections 100.5(e), 150 and 300.6 of the COE in that they caused Falcon to have failed to maintain sufficient liquid capital and to report Falcon’s non-compliance with the applicable laws and regulations to the SFC, and thereby failing to comply with relevant laws and regulations and avoid any action that discredits the profession.

Complaint 3

- (8) Section 34(1)(a)(vi) of the PAO applies to Ang for his failure or neglect to observe, maintain and otherwise apply sections 100.5(e) and 150 of the COE in that he failed to notify the SFC of his resignation as a director of Falcon in accordance with the relevant laws and regulations and avoid any action that discredits the profession.

Complaint 4

- (9) Section 34(1)(a)(viii) of the PAO applies to the Respondents in that they have been guilty of professional misconduct.

FACTS AND CIRCUMSTANCES IN SUPPORT OF THE COMPLAINTS

Complaints 1 and 2

Provision of false and misleading information in Falcon's licence application

- (10) Chan admitted in his interview with the SFC that in support of Falcon's licence application filed with the SFC by one of the directors of Falcon in June 2014, he had prepared (i) a "Supplement 7 - Financial Resources" form stating that Falcon had a total liquid capital of HK\$4.9 million which was HK\$1.9 million in excess of the required liquid capital of HK\$3 million, and (ii) vouchers showing that cheques for the sum of HK\$4 million and HK\$990,000, both drawn and signed by Ang, were deposited on 30 June 2014.
- (11) Ang caused Falcon to submit both documents to the SFC. By doing so, Falcon held out that it had the requisite liquid capital of HK\$3 million to fulfil the requirements for qualifying for a licence. However, both cheques were dishonoured upon presentation.
- (12) Ang and Chan caused Falcon to provide materially false and misleading information in its licence application. Therefore, the SFC found that they were in breach of section 383(1) of the SFO.

Provision of false and misleading information in the FRs and failure to maintain sufficient liquid capital

- (13) Under section 56(1) of the Securities and Futures (Financial Resources) Rules ("FRR"), Falcon was required to submit monthly FRs to the SFC. The FRs shall include, inter alia, its month-end liquid capital computation. Under rule 6 of the FRR, Falcon should at all times maintain a minimum liquid capital of HK\$3 million.
- (14) During the period from July 2014 to June 2017, Falcon submitted a total of 28 FRs each containing a computed amount of liquid capital which purportedly exceeded the required amount of minimum liquid capital of

HK\$3 million. According to the computation prepared by Falcon, the major component of its liquid capital was its “bank balance held in other accounts and cash in hand”. Such bank balance amount included 36 cheques issued by Ang in favour of Falcon and were deposited at various month-end dates into Falcon’s bank accounts.

- (15) All these 36 cheques were dishonoured upon presentation. Had the amounts of the 36 cheques been excluded from the computation, Falcon would have liquid capital deficits. Accordingly, Falcon breached rule 6 of the FRR for 28 out of 36 months from July 2014 to June 2017.
- (16) The information available showed that Ang drew the 38 cheques (including the two cheques mentioned in paragraph (10) above) (“**38 Cheques**”) from the bank accounts of his own or his private companies to Falcon for the purpose of maintaining Falcon’s month-end liquid capital balance. He was the sole authorised signatory of the bank accounts on which the 38 Cheques were drawn. He knew or should have known that all those cheques would be and were dishonoured.
- (17) In his interview with the SFC, Ang put forward the following incredible claims: (i) it was the personnel in Falcon’s accounts department, including Chan, who decided and “arranged” which of his personal or private companies’ accounts to be used to issue the 38 Cheques; (ii) he did not know the balance in his personal accounts, for he had no token or password which only the accounting personnel possessed; (iii) despite being the shareholder of Falcon responsible for funding the business, and his knowledge of the bounced cheques, he had to rely on Falcon’s responsible officers to inform him that the company could not continue operating with deficient liquid capital, but they never informed him; (iv) he did not even know the liquid capital requirement of HK\$3 million; and (v) despite the bank account of Castle Step Ltd. having been closed on 17 March 2015, 17 cheques from that account were issued after that date, but he did not know that the account was closed, and he did not select that account to be used after its closure.
- (18) The above claims are utterly incredible. It was clear that Ang was the mastermind of the window-dressing scheme.
- (19) Chan, as the person in charge of Falcon’s accounting function and reporting to Ang, was fully aware of the true financial position of Falcon. He or his subordinates prepared 30 out of the 38 Cheques signed by Ang during a period of more than two years. He had knowledge of Falcon’s true financial position from the repeated dishonouring of the cheques, and from his full access to Falcon’s bank account. Also, Chan prepared the FRs and printed out only the bank account balance of Falcon without showing the dishonoured cheques in the following business dates, as supporting documents for Falcon’s responsible officers for review and signing off the FRs. Under these circumstances, Falcon’s responsible officers had been misled into

believing that Falcon did have sufficient cash at bank as part of the liquid capital for complying with the minimum requirement. Chan took part in the window-dressing scheme to assist Ang to disguise Falcon's failure to maintain sufficient capital as required by rule 6 of the FRR up to the date of his resignation.

- (20) Since Ang and Chan caused Falcon to provide materially false and misleading information in the FRs, the SFC found that they were in breach of section 384(1) of the SFO.

Failure to notify the SFC of insufficient liquid capital

- (21) Under section 146 of the SFO, Falcon should notify the SFC in writing as soon as reasonably practicable when it became aware of its inability to maintain sufficient liquid capital. In addition, under rule 55 of the FRR, Falcon should notify the SFC as soon as reasonably practicable and within one business day of (i) it becoming aware of, inter alia, its liquid capital had fallen below 120% of its required liquid capital, and (ii) any information contained in any of its previous FRs had become false or misleading in a material particular.
- (22) Despite the abovementioned requirements, Falcon failed to notify the SFC of (i) its inability to maintain sufficient liquid capital; (ii) its liquid capital had fallen below 120% of its required liquid capital; and (iii) the information contained in its FRs had become materially false or misleading.
- (23) Ang was the person who orchestrated the window-dressing scheme and Chan assisted Ang in perpetuating it. As such, both Ang and Chan deliberately caused Falcon to have failed to notify the SFC of Falcon's non-compliance with section 146 of the SFO and rule 55 of the FRR.
- (24) Based on the above, the Respondents breached:-
- (i) sections 100.5(a) and 110 of the COE in that they provided false or misleading information in relation to liquid capital in Falcon's licence application and the FRs, in breach of sections 383(1) and 384(1) of the SFO; and
 - (ii) sections 100.5(e), 150 and 300.6 of the COE in that they caused Falcon to have failed to maintain the required minimum liquid capital in accordance with rule 6 of the FRR, and to report Falcon's non-compliance with the applicable laws and regulations to the SFC, in accordance with section 146 of the SFO and rule 55 of the FRR. Hence, the Respondents, as the persons involved in the management of Falcon's business, failed to comply with relevant laws and regulations and avoid any action that discredits the profession.

Complaint 3

Failure to notify the SFC of cessation as a director

- (25) Section 135(6) of the SFO provides that where a person becomes or ceases to be a director of a licensed corporation, both the person and corporation shall provide the SFC with a notification together with certain details within seven business days. Failure to do so is a criminal offence under section 135(7), liable on conviction to a fine at level 5.
- (26) Ang resigned as a director of Falcon on 23 October 2017 but failed to provide the SFC with written notification of his resignation within seven business days as required by section 135(6) of the SFO. Breaching a criminal law would bring discredit to the profession. Accordingly, Ang failed to comply with sections 100.5(e) and 150 of the COE.

Complaint 4

- (27) The Respondents failed to comply with the fundamental principles of integrity and professional behaviour under the COE in their position as a director and the chief financial officer, respectively, of Falcon. Their conduct in the window-dressing scheme has led to Falcon's licence having been revoked by the SFC and they were banned by the SFC from re-entering into the financial industry. The Respondents' breaches are serious.
- (28) In addition, integrity and honesty are cornerstones of the accountancy profession and its reputation. The Respondents' provision of materially false or misleading information in an elaborate dishonest scheme to conceal the true financial position of Falcon from the SFC adversely affect the good reputation of the accountancy profession.
- (29) Such "egregious and serious misconduct" by the Respondents clearly falls below the standard expected of a professional accountant and amounts to professional misconduct.

THE PROCEEDINGS

3. A Disciplinary Committee was constituted under section 33(3) of the PAO and a Notice of Commencement of Proceedings ("Notice") was issued on 25 May 2021. The Respondents did not submit their cases in accordance with the procedural timetable enclosed with the Notice. In the case of the 1st Respondent, he has not submitted his case notwithstanding having previously requested and been granted two time extension to do so.
4. The Disciplinary Committee directed on 10 November 2021 that the substantive hearing be dispensed with unless the Respondents filed a written objection. No objection or reply was received from the Respondents. The Clerk

to the Disciplinary Committee wrote to the parties on 26 November 2021 advising that the substantive hearing had been dispensed with, and the parties were directed by the Chairman of the Disciplinary Committee to file their submissions on sanctions and costs by 17 December 2021.

5. The Complainant filed its submission on sanctions and costs on 16 December 2021. The Respondents did not file any submission on sanctions and costs by 17 December 2021.
6. The Disciplinary Committee proceeded to determine that the Complaints 1 to 4 were found proven based on submissions filed without a hearing.
7. To assist the Disciplinary Committee in exercising its discretion, the Complainant has referred to a number of past decisions with similar facts to the current case. However, these are not binding on the Disciplinary Committee and act as a guide.
8. In considering the proper order to be made in this case, the Disciplinary Committee has had regard to all the aforesaid matters, including the particulars in support of the Complaint and the conduct of the Complainant and the Respondents throughout the proceedings.

SANCTIONS AND COSTS

9. The Disciplinary Committee ORDERS that:-
 - (a) the Respondents be reprimanded under section 35(1)(b) of the PAO;
 - (b) the name of the 1st Respondent be permanently removed from the register of certified public accountants under section 35(1)(a) of the PAO and it shall take effect on the 42nd day from the date of this order;
 - (c) the name of the 2nd Respondent be removed from the register of certified public accountants for three (3) years under section 35(1)(a) of the PAO and it shall take effect on the 42nd day from the date of this order; and
 - (d) the Respondents do pay the costs and expenses of and incidental to the proceedings of the Complainant, including the costs of the Disciplinary Committee, in the sum of HK\$128,477 under section 35(1)(iii) of the PAO. The costs and expenses shall be shared equally by the Respondents.

Dated the 1st day of March 2022.

Ms. CHAN Yiting, Bonnie
(Chairman)

Mr. CHAU Chi Chung
(Member)

Mr. MORRISON, Kenneth Graeme
(Member)

Mr. CHOW Lap San, Edward
(Member)

Mr. SHEN Ka Yip, Timothy
(Member)