

IN THE MATTER OF

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

BETWEEN

The Registrar of the Hong Kong Institute of Certified
Public Accountants

COMPLAINANT

AND

Mok Wing Kai, Henry
(Membership no. F02518)

RESPONDENT

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

Members: Mr. Fung Chi Man, Henry (Chairman)
Ms. Lau Wan Ching
Ms. Lee Fu Fan
Mr. Grant Andrew Jamieson, CPA
Ms. Leung Chi Ying, Kathy, CPA

ORDER AND REASONS FOR DECISION

1. This is a complaint by the Registrar of the Hong Kong Institute of Certified Public Accountants (the "**Institute**") as the Complainant against the Respondent Mr. Mok Wing Kai, Henry, a certified public accountant (practising) pursuant to section 34(1A) of the Professional Accountants Ordinance (Cap. 50) (the "**PAO**").

2. The particulars of complaint are set out in a letter dated 6 June 2018 from the Registrar to the Council of the Institute for consideration of referral to the Disciplinary Committee ("**Letter**").

3. We set out the same here:

(1) Background

(1.1) The subject company, Greencool Technology Holdings Limited (formerly listed in Hong Kong, stock code: 8056) ("**Company**"), was an investment holding company which had offices in Hong Kong and Beijing. It conducted its commercial activities through various subsidiaries in the mainland of People's Republic (sic) of China ("PRC") (collectively the "**Group**").

(1.2) Shortly after the arrest of the Group's founder and Chairman (Mr. Gu) in the PRC, the trading of the Company's shares at the Stock Exchange of Hong Kong was suspended on 1 August 2005. The Company was delisted some two years later on 18 May 2007.

(1.3) The Respondent was the Group's Qualified Accountant and Company Secretary at the material time. He was also described as being the Financial Controller of the Group.

(1.4) Pursuant to the notice issued by the Securities and Futures Commission ("**SFC**") on 17 June 2014 under section 252(2) and Schedule 9 of the Securities and Futures Ordinance (Cap. 571) ("**SFO**"), the Market Misconduct Tribunal ("**MMT**") conducted proceedings in relation to the Company concerning a purported accounting fraud (the "**Proceedings**").

(1.5) The Proceedings which identified nine specified persons (including the Respondent) uncovered a complex and sophisticated fraudulent scheme. The scheme essentially consisted of materially inflating assets (cash held in various bank accounts) and substantially understating or failing to disclose liabilities (loans due to various banks) within certain of the Group's subsidiaries in the PRC. False commercial papers were created, and separate books of accounts were maintained in a number of subsidiaries, with the accounts that reflected the reality of business affairs being withheld from outsiders, more particularly the auditors.

(1.6) The Group's auditors issued an unqualified opinion on the Group's accounts for each of the five financial years from 2000 to 2004 (the "**Relevant Years**").

(1.7) The MMT found that fraud occurred during the Relevant Years by way of falsified sales, inflated bank balances, and non-disclosure of bank loans.

- (1.8) On 29 December 2016, the MMT found the Respondent negligent as to whether the audited accounts together with the combined final results of the Group for the Relevant Years were false or misleading as to material facts or through the omission of material facts, and was therefore culpable of market misconduct pursuant to section 277(1) of the SFO.
- (1.9) On 23 June 2017, the MMT issued the following sanctions against the Respondent:
- (a) disqualification order for a period of three years;
 - (b) payment of costs of HK\$1,080,000; and
 - (c) recommendation that disciplinary action against the Respondent be taken by the Institute.

(2) The Complaints

Complaint 1

- (2.1) Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed to comply with one or more of the fundamental principles in paragraphs 2 and/or 4 of Statement 1.200 *Professional Ethics Explanatory Foreword* (the "**Statement**"), when he was found to be culpable of market misconduct by the MMT.

Complaint 2

- (2.2) Section 34(1)(a)(x) of the PAO applies to the Respondent in that the aforesaid market misconduct amounted to dishonourable conduct.

(3) Relevant Ethical Requirements

- (3.1) Paragraph 2 of the Statement states:

A member should carry out his professional work with a proper regard for the technical and professional standards expected of him as a member and should not undertake or continue professional work which he is not himself competent to perform unless he obtains such advice and assistance as will enable him competently to carry out his task.

- (3.2) Paragraph 4 of the Statement states:

A member should follow the ethical guidance of the HKICPA and in circumstances not provided for by that guidance should conduct

himself in a manner consistent with the good reputation of the profession and the HKICPA.

(4) Facts and Circumstances in Support of Complaint 1

- (4.1) The Respondent, as the Qualified Accountant and Company Secretary and/or Financial Controller of the Group, was responsible for its financial reporting as well as maintenance of minutes and resolutions of board and committee meetings.
- (4.2) The Respondent worked in the Group's Hong Kong office. The consolidation of the Group accounts took place in the Group's Shenzhen subsidiary, which was overseen by a Board-authorized Executive Director (Mr. Zhang), who in turn was answerable to the Group's founder and Chairman (Mr. Gu). The consolidated accounts would then be reviewed by the Hong Kong accounting department, which was under the charge of the Respondent, and placed before the Audit Committee for approval.
- (4.3) The Group's audited accounts in each of the five financial years from 2000 to 2004 (collectively "**Annual Accounts**") contained materially false or misleading information as a result of fictitious sales and commercial projects being created within certain subsidiaries, which in turn created false profits.
- (4.4) The Hong Kong auditors were supplied with a set of accounts which contained inflated or incorrect figures. As a result of inflated bank deposits and concealed bank loans, the net asset value of the Group was overstated by an amount in the range of RMB 487 million to RMB 1,061 million in the Relevant Years. This was likely to impact the trading and price of the Company's securities in Hong Kong.
- (4.5) The Respondent, in his position of Qualified Accountant and Company Secretary and/or Financial Controller, was a senior officer of the Company, and had group-wide responsibilities to ensure its financial integrity. He was responsible for overseeing and supervising all financial information of the Group. However he failed to exercise any adequate financial supervision and control over the subsidiaries. MMT therefore found him to be negligent.
- (4.6) The reasons for the finding of negligence were, inter alia, as follows:
- (a) The Respondent tried to remove himself as far as possible from any responsibility for what happened in the PRC, whereas the MMT found that his duties extended to each of the subsidiaries within the Group.

- (b) The Respondent claimed that despite his being in the position of the Group's Financial Controller and/or Qualified Accountant, he had no authority in the exercise of his responsibilities to ensure that the PRC subsidiaries adopted appropriate financial standards. He believed that his role of Financial Controller was "limited to the financial reporting at the group level".
 - (c) Based on (b) above, the Respondent was prepared to enter into an arrangement of compromise which not only reduced his ability to fulfil his own duties but potentially compromised the financial integrity of the Group.
 - (d) Despite the above self-imposed compromise, the Respondent had signed letters of representation to the Hong Kong auditors stating that proper accounts of the entire Group has been kept.
 - (e) In its proposal submitted to the management of the Company, the Company's auditor expressed concern that the Hong Kong finance department, effectively, the Respondent himself, knew little about the financial position and business operations of the PRC subsidiaries. As a result, the department had lost the ability to play the essential role of financial supervision and control over the subsidiaries. A recommendation was made at the time that the function of financial supervision and control over the subsidiaries should be strengthened.
 - (f) The Respondent took no steps to follow the recommendations. Having abandoned an essential part of his responsibilities, and being prepared to abide by that abandonment, he failed in his duty of care to the Company and the market.
 - (g) The Respondent might well have picked up indications or red flags if he had exercised his supervisory role with some energy and insight (e.g. paying more frequent visits to the subsidiaries) as expected of a senior executive.
- (4.7) The Respondent's negligence was not to be seen as a failure in isolation with no consequential effect. Rather, it meant that over an extended period of time, the various subsidiaries of the Group were essentially given free rein working under the management of directors who were complicit in the accounting fraud.
- (4.8) Based on the above, it is clear the findings in the Proceedings demonstrated the Respondent's failure to carry out his professional work with a proper regard for the technical and professional standards expected of him as a member of the Institute, in accordance with paragraph 2 of the Statement.

(4.9) As such, the Respondent failed to conduct himself in a manner consistent with the good reputation of the professional and the Institute, and thereby breached paragraph 4 of the Statement.

(5) Facts and Circumstances in Support of Complaint 2

(5.1) It is clear that the MMT found that the Respondent, being a qualified accountant with considerable experience in the commercial world, had evaded his responsibilities of the Company's Qualified Accountant and/or Financial Controller in the overall financial reporting and financial supervision and control of the Group.

(5.2) Throughout the Proceedings in which the Respondent was found negligent and therefore culpable of market misconduct, it is evident that the Respondent's professionalism was being questioned and criticised by the MMT. As demonstrated in section (4) above, the Respondent's negligence and lack of professional competence and duty of care would indisputably have also brought discredit to himself and the profession, and therefore could be considered as dishonourable conduct.

4. On 28 July 2018, the Respondent signed a confirmation setting out his admission of the complaint and did not dispute the facts as set out in the Letter.
5. On 12 September 2018, this Committee approved the joint application made by the parties on 30 July 2018 that the procedures set out in Rules 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
6. On 3 October 2018, the Complainant filed his submissions on sanctions. It identified a complaint (D-16-1208P) which may have reference value for this Committee. The case involves a sole-proprietor practicing CPA who issued 342 auditor's reports during 18 months, of which 340 were qualified reports. He was found to be placing a self-imposed limitation by issuing qualified reports to circumvent the requirement of carrying out appropriate audit procedures. The respondent faced charges of professional competence and professional misconduct, and was ordered that his practicing certificate be cancelled for 6 months and to pay costs.
7. This Committee has taken into account the previous case while bearing in mind that this Committee has discretion to decide on each case according to its facts and circumstances.

8. On 3 October 2018, the Respondent filed his submissions on sanctions. Two mitigation letters were filed together with the submissions on sanctions.
9. By 23 October 2018, the Respondent further filed a reference letter signed by eight certified public accountants and one mitigation letter for the Respondent.
10. On 30 October 2018, the Complainant responded to the reference letter and mitigation letter filed by the Respondent.
11. On 7 November 2018, the Complainant stated that it would not submit further statement of costs.

Discussions

12. Given the Respondent's admission of the complaint, the only issue before this Committee is, by virtue of the breaches and the mitigating factors in the present case, what is the appropriate order on sanctions and costs.
13. This Committee agrees with the Complainant that:
 - (1) The case involves a serious breach of professional standards and competence by neglecting duties and responsibilities. Serving as a senior officer of the Company, the Respondent's negligence and failure in his duty of care effectively negated any adequate financial supervision and control for an extended period; and
 - (2) The case concerns the fraud perpetrated in a listed company which has led to a greater impact on public interest and damage to the profession's reputation.
14. This Committee is of the view that a temporary removal from membership is necessary.

Sanction and Costs

15. The Complainant submitted that a temporary removal from membership of no less than 6 months would be necessary and appropriate.
16. The Respondent submitted that a reprimand and the costs of this proceedings of no more than HK\$50,000 to be paid would be appropriate.
17. We also take into account the following circumstances when deciding on the appropriate sanction:
 - (1) The gravity of the Complaint;
 - (2) The Respondent's early admission;

- (3) The Respondent's cooperative attitude; and
 - (4) The mitigation letters and reference letter for the Respondent. In essence, the acquaintances of the Respondent, who are accountants, solicitor and policeman, wrote to express their trust to the Respondent. They believed that the Respondent is a man of integrity and is dedicated to his work as an accountant and the community.
18. Taking into account all the relevant circumstances, this Committee believes that a temporary removal of the Respondent from membership of 6 months to be appropriate.
 19. This Committee believes that it is important to maintain public confidence in the competence of the profession, and that the sanctions shall serve a deterrence function.
 20. This Committee makes it clear that the sanction imposed on the Respondent in the present case reflects what was considered appropriate having regard to the mitigating factors and it does not intend to be a benchmark for cases involving similar breaches in the future.
 21. As to costs, this Committee is of the view that the Respondent should pay costs of and incidental to the proceedings. Since it was the conduct of the Respondent which has brought him within the disciplinary process, it is fair that he should pay the costs and expenses. Having regard to the Statement of Costs and the fact that the Respondent be temporarily removed from membership, we order that the Respondent do pay the Complainant's costs in the total sum of HK\$56,494.

Orders

22. Having regard to all the matters we make the following ORDERS:
 - (1) The Respondent be reprimanded under section 35 (1)(b) of the PAO;
 - (2) A temporary removal of the Respondent from the register of the certified public accountants for 6 months under section 35 (1)(a) of the PAO and it shall take effect from the 42nd day from the date of this Order; and

- (3) The Respondent do pay the costs and expenses of and incidental to the proceedings of the Complaint in the total sum of HK\$56,494 which includes the costs of the Clerk to the Committee under section 35(1)(iii) of the PAO.

Dated the 8th day of January 2019

Mr. Fung Chi Man, Henry
(Chairman)

Ms. Lau Wan Ching
(Member)

Mr. Grant Andrew
Jamieson
(Member)

Ms. Lee Fu Fan
(Member)

Ms. Leung Chi Ying,
Kathy
(Member)