

IN THE MATTER OF

A Complaint made under Sections 34(1A) and 41A of the Professional Accountants Ordinance (Cap.50) (“the PAO”) and referred to the Disciplinary Committee under Section 33(3) of the PAO

BETWEEN

The Registrar of the Hong Kong Institute of Certified Public Accountants

COMPLAINANT

AND

Mr. Chan Kam Fuk (A20032)
Dominic K.F. Chan & Co. (1777)

1st RESPONDENT
2nd RESPONDENT

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

Members: Dr. WILSON Claire (Chairman)
Mr. SIU Choi Fat
Mr. YU Tin Yau, Elvin
Mr. CHEUNG Yiu Leung, Andy
Mr. LAI Yat Hin, Adrian

ORDER AND REASONS FOR DECISION

1. This is a Complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (the “**Institute**”) against Mr. Chan Kam Fuk, a certified public accountant (practising) (the “**1st Respondent**”) and Dominic K. F. Chan & Co., a firm (the “**2nd Respondent**”) (collectively the “**Respondents**”).

2. By a letter dated 13 November 2018 to the Council of the Institute, the Registrar (the “**Complainant**”) complained that the Respondents had failed or neglected to observe, maintain or otherwise apply a professional standard under section 34(1)(a)(vi) of the PAO.
3. The Respondents admitted the Complaint against them by submitting a ‘Confirmation by Respondents’, which was sent to the Disciplinary Committee by letter dated 14 December 2018.
4. The facts set out in the Complaint are not disputed by the Respondents.
5. The parties jointly proposed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules (the “**Rules**”) be dispensed with and the parties should make written submissions on sanctions and costs.
6. The Disciplinary Committee agreed to the parties’ proposal to dispense with the steps set out in paragraphs 17 to 30 of the Rules.
7. The Complainant made submissions on sanctions and costs by letter dated 19 March 2019.
8. The Respondents made submissions on sanctions and costs by letter dated 19 March 2019.

BACKGROUND

9. On 7 February 2018, the Financial Reporting Council (“**FRC**”) referred to the Institute an extract of a review assessment report (“**FRC Report**”) concerning non-compliance with accounting requirements and auditing irregularities in relation to the consolidated financial statements of Art Textile Technology International Company Limited (now known as Art Group Holdings Limited) (stock code: 00565) (the “**Company**”) and its subsidiaries (collectively the “**Group**”) for the year ending 30 June 2015 (“**2015 Financial Statements**”).
10. The FRC Report identified errors and departures from HKAS 33 Earnings per Share (“**EPS**”) in the Company’s calculation of basic and diluted loss per share (“**LPS**”) as disclosed in the 2015 Financial Statements.

11. The 2nd Respondent issued an unmodified opinion on the 2015 Financial Statements on 25 September 2015. As the engagement partner of the audit, the 1st Respondent failed to identify the mistakes in the Company's LPS calculations which resulted in a significant understatement of LPS reported in the 2015 Financial Statements.
12. The Respondents admitted the allegations set out in the FRC Report.

THE COMPLAINT

13. Section 34(1)(a)(vi) of the PAO applies to the 1st Respondent and, through section 41A of the PAO, applies to the 2nd Respondent in that they failed to observe, maintain or otherwise apply a professional standard in respect of the audit of the basic and diluted loss per share (LPS) as reported in the 2015 Financial Statements.

FACTS AND CIRCUMSTANCES LEADING TO THE COMPLAINT

14. The 2015 Financial Statements showed that the 2015 basic and diluted LPS were 0.40 Hong Kong cents (HK cents) and 0.39 HK cents respectively.
15. According to the 2015 Financial Statements, note 14:
 - (a) The basic LPS of 0.40 HK cents was derived from dividing the “loss for the year attributable to the owners of the Company” (the “Numerator”) of HK\$4.65 million by the weighted average number of ordinary shares for the purpose of basic loss per share of 1,175,296,000 shares.
 - (b) The diluted LPS of 0.39 HK cents was derived from dividing the Numerator of HK\$4.65 million by the weighted average number of ordinary shares for the purpose of diluted loss per share of 1,201,319,000 shares. To arrive at 1,201,319,000 shares, the Company included the effect of the potential ordinary shares in respect of the 26,023,000 share options issued by the Company.
16. The Company made two errors in the calculations stated in paragraph 15(a) and (b) above.
 - (a) With regards to the calculation of the basic and diluted LPS, the Numerator should be HK\$12.44 million. The figure of HK\$4.65 million used by the Company in its calculations included profits attributable to the non-controlling interests which contravened the requirements under

paragraphs 10 and 30 of HKAS 33 in determining the basic and diluted LPS.

(b) The potential ordinary shares had an anti-dilutive effect in that their conversion to ordinary shares would decrease the LPS value. Under paragraphs 41 and 43 of HKAS 33, calculation of diluted LPS should not include anti-dilutive effects which would decrease LPS from continuing operations.

17. If the calculations were computed accurately in accordance with HKAS 33, the correct basic and diluted LPS for 2015 should both be 1.06 HK cents, which is more than double the amount of the disclosed figures. As such, the basic and diluted LPS were significantly misstated in the 2015 Financial Statements.
18. LPS/EPS calculations reflect the performance of a company and as such they are key indicators for steering equity investment decisions. The accuracy of such calculations in a company's financial statement is crucial.
19. In conducting audit procedures on the basic and diluted LPS in the 2015 Financial Statements, the Respondents did not comply with the relevant professional standards in that they failed to identify that an incorrect loss figure was used in the LPS calculations; and incorrectly took into account the anti-dilutive nature of the potential ordinary shares.
20. The Respondents admitted that they had extracted a wrong loss figure when auditing the LPS calculation and agreed that the potential ordinary shares are anti-dilutive.
21. Under sections 100.5(c) and 130.1 of the Code of Ethics for Professional Accountants ("**Code**"), a professional accountant shall maintain professional knowledge and skill at a level required, and act diligently in accordance with applicable technical and professional standards when performing professional work.
22. The Respondents did not maintain professional knowledge and skill at a level required, and did not act diligently in accordance with applicable technical and professional standards in respect of their audit of the basic and diluted LPS reported in the 2015 Financial Statements.
23. The Code is a professional standard referred to in the PAO, and section 34(1)(a)(vi) applies to the Respondents in this respect.

DECISION AND ORDER

24. The Disciplinary Committee is satisfied by the admission of the Respondents and the evidence adduced before it that the Complaint is proved.
25. The Disciplinary Committee acknowledges that it has a wide discretion as to the sanctions that it could impose, and that each case is fact sensitive. The Committee is not bound by the decision of previous committees.
26. The Disciplinary Committee has taken into account the past disciplinary decisions referred by the Complainant and other past decisions published by the Institute.
27. In determining the proper Order to be made, the Disciplinary Committee has considered the facts and circumstances in support of the Complaint and the conduct of the Respondents throughout the proceedings. The admission of the Respondents and their cooperation have also been taken into consideration.
28. The Complainant's and Respondents' submissions on sanctions and costs have been considered by the Disciplinary Committee.
29. It is noted that the Respondents have now implemented steps to avoid a repetition of the incident in the future.
30. The Disciplinary Committee regards the Complaint as serious.
31. The Complaint concerns inaccurate LPS/EPS calculations, which reflect the performance of a company. Since such calculations are key indicators for steering equity investment decisions, the accuracy of such calculations in a company's financial statement is crucial.
32. It is also noted that the Respondents have a past history of non-compliance with professional standards in their reporting work on a listed company's unaudited pro forma financial information, which is of concern to the Disciplinary Committee.
33. It is noted that the Respondents do not raise any objections to the costs that may be imposed in connection with the Complaint.

34. Given the serious nature of the Complaint and past history of non-compliance, the Disciplinary Committee considers that a financial penalty of HK\$80,000 is the appropriate sanction to be imposed against the Respondents.
35. The Disciplinary Committee considers that a reprimand against the Respondents shall also be imposed as an appropriate sanction to signify the Committee's disapproval of conduct in this Complaint.
36. With regards to costs, the Disciplinary Committee considers that the sum of HK\$36,630 was incurred reasonably and shall be borne by the Respondents.
37. The Disciplinary Committee ORDERS that: -
 - (a) the Respondents be reprimanded under Section 35(1)(b) of the PAO;
 - (b) the Respondents shall pay a penalty of HK\$80,000 under Section 35(1)(c) of the PAO;
 - (c) the Respondents shall jointly and severally pay the costs and expenses of and incidental to the proceedings in the sum of HK\$36,630 under Section 35(1)(iii) of the PAO.

Dated the 5th day of June 2019

Dr. WILSON Claire
Chairman

Mr. SIU Choi Fat
Disciplinary Panel A

Mr. CHEUNG Yiu Leung, Andy
Disciplinary Panel B

Mr. YU Tin Yau, Elvin
Disciplinary Panel A

Mr. LAI Yat Hin, Adrian
Disciplinary Panel B