

IN THE MATTER OF

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

BETWEEN

The Registrar of the Hong Kong Institute
of Certified Public Accountants

COMPLAINANT

AND

Tong Yat Hung (A01188)

FIRST RESPONDENT

Cheng & Cheng Limited (M0035)

SECOND RESPONDENT

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

Members: Ms. DOE, Julianne Pearl (Chairman)
Mr. CHAN, Chak Ming
Mr. FAN, Hoi Kit
Mr. CHOW, Tak Sing, Peter
Mr. CHU, Yau Wing, Jason

ORDER AND REASONS FOR DECISION

1. This is the complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (“**the Institute**”) against Tong Yat Hung, a practising certified public accountant (“**the First Respondent**”) and Cheng and Cheng Limited, a corporate practice (“**the Second Respondent**”) (collectively known as “**the Respondents**”).

2. By a letter dated 6 September 2018 to the Council of the Institute ("**the Complaint**"), the Registrar ("**the Complainant**") complained that the Respondents failed or neglected to observe, maintain or otherwise apply professional standards under section 34(1)(a)(vi) of the Professional Accountants Ordinance ("**PAO**").
3. In November 2018, the parties amended the Complaint ("**Amended Complaint**"). On 21 December 2018, the Respondents confirmed their admission of the complaints against them and they did not dispute the facts as set out in the Amended Complaint. The parties jointly proposed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules (the "**Rules**").
4. In view of the Respondents' admission, the Committee acceded to the parties' joint application to dispense with the steps set out in paragraphs 17 to 30 of the Rules and directed the parties to make written submissions on sanctions and costs.
5. On 7 May 2019, the Complainant made his submissions on sanctions and costs.
6. On 6 May 2019, the Respondents filed an application for time extension for making their written submissions on sanctions and costs. The Disciplinary Committee granted leave for their application. On 21 May 2019, the Respondents made and filed their written submissions on sanctions and costs to the Disciplinary Committee. On 10 June 2019, the Complainant provided his comments on the submissions made by the Respondents.

BACKGROUND

7. The Second Respondent ("**Auditor**") audited the consolidated financial statements of Kiu Hung International Holdings Limited (Stock Code: 00381) ("**Company**") and its subsidiaries ("**Group**") for the year ended 31 December 2015. The First Respondent was the engagement director signing the auditor's report.
8. The engagement included an undertaking to review a preliminary announcement of final results for the financial year and required sight of

the preliminary announcement in sufficient time to enable the Auditor to complete its work.

9. On 1 April 2016, the Company published a Final Results Announcement for the Year Ended 31 December 2015 ("**Original Announcement**"), dated 31 March 2016.
10. The Original Announcement contained the following statement under the heading "Scope of work of Cheng & Cheng Limited":
11. "The financial figures in respect of the preliminary announcement of the Group's results for the year ended 31 December 2015 have been agreed by the Group's auditor, Cheng & Cheng Limited, to the amounts set out in the Group's consolidated financial statements..." (the "**Statement**")
12. The Statement was false or materially misleading as the Auditor had not agreed the financial figures before issuance of the Original Announcement.
13. Since 1 April 2016, the investing public and the Stock Exchange of Hong Kong Limited (the "**Exchange**") were erroneously led to believe that the financial results reported in the Original Announcement had been agreed by the Auditor. In addition, the Original Announcement contained more than 15 instances of errors in the figures or contents of the financial statements, which were only corrected by a clarification announcement published on 22 April 2016 ("**Clarification Announcement**").
14. Notwithstanding the Clarification Announcement, the Auditor did not disassociate itself from the Statement, in that there has never been any correction issued to notify the public that the financial figures in the Original Announcement were not in fact agreed by the Auditor.
15. As a result, the Auditor did not exercise adequate diligence in taking appropriate action to alert those in an oversight position about the false or misleading information in the Statement.

THE COMPLAINTS

First Complaint

16. Section 34(1)(a)(vi) of the PAO applies to the First Respondent in that he failed to observe, maintain or otherwise apply the fundamental principle of professional competence and due care in accordance with sections 100.5(c) and 130 of the Code of Ethics for Professional Accountants ("**Code**"), in that he failed to act diligently to take any step to disassociate the Auditor from the Statement.

Second Complaint

17. Section 34(1)(a)(vi), by way of section 34(1AA) of the PAO, applies to the Second Respondent in that it failed to observe, maintain or otherwise apply the fundamental principle of professional competence and due care in accordance with sections 100.5(c) and 130 of the Code, in that it failed to act diligently to take any step to disassociate itself from the Statement.

RELEVANT PROFESSIONAL STANDARDS

18. Section 100.5(c) of the Code states that a professional accountant shall comply with the fundamental principle of professional competence and due care *"to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional services based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards."*

19. Section 110.2 of the Code states:

"A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the professional accountant believes that the information:

- a. Contains a materially false or misleading statement;*
- b. Contains statements or information furnished recklessly; or*

- c. *Omits or obscures information required to be included where such omission or obscurity would be misleading.*

When a professional accountant becomes aware that the accountant has been associated with such information, the accountant shall take steps to be disassociated from that information."

20. Section 130.1(b) of the Code states that all professional accountants *should "act diligently in accordance with applicable technical and professional standards when providing professional services."*
21. Section 130.4 of the Code states that *"[d]iligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis."*
22. Practice Note 730 ("PN 730") provides *"Guidance for Auditors Regarding Preliminary Announcements of Annual Results"* and should be read in the context of the *"Amended Preface to the Hong Kong Quality Control, Auditing, Review, Other Assurance, and Related Services Pronouncements"* which sets out the application and authority of practice notes. It was prepared in consultation with the Exchange and the Securities and Futures Commission, and any deviations from PN 730 are expected to be explained by the Auditor.

FACTS AND CIRCUMSTANCES IN SUPPORT OF THE COMPLAINTS

23. PN 730 provides specific steps and procedures for an auditor to properly discharge its responsibilities when assisting a company with preliminary results announcements.
24. On 31 March 2016, Respondents worked with management of the Company to finalize the preliminary results. Ultimately, the Respondents realized there was insufficient time for them to agree the results before their imminent release. They verbally advised management of the Company that the Original Announcement was not ready for release and release of the same would be entirely at the Company's own risk and responsibility.

25. As the engagement letter stated the Auditor would require sufficient time to agree the information, the Auditor was within its rights to direct the Company to remove reference to the results having *"been agreed by the Group's auditor"* from the Statement.
26. Despite management's knowledge that the Original Announcement contained a materially misleading statement about the Auditor agreeing the financial results, the Company proceeded with its issue on 1 April 2016.
27. Instead of taking action to disassociate itself from the Statement, the Auditor merely assisted the Company in preparing a Clarification Announcement to correct the errors in the figures and contents that were in the Original Announcement.
28. Paragraph 39 of PN 730 states that *"where auditors become aware that the directors have released a preliminary announcement of results with which they disagree they write to the audit committee regarding the discrepancies and request the audit committee to inform the regulators of such matter."*
29. Further to the point, section 110.2 of the Code states that a professional accountant should disassociate himself from information he believes to be materially misleading or recklessly furnished.
30. In the circumstances, the Auditor should have taken steps to disassociate itself from the Statement by writing to the Company's audit committee to inform them that the Statement was not true.
31. According to the Respondents' submissions, upon becoming aware of the release of the Original Announcement, the Auditor immediately contacted the Company to clarify the matter given their review of the financial results had not been completed in accordance with PN 730. They obtained a written undertaking from the Company that it would publish a clarification announcement.
32. The Respondents further submitted that paragraph 39 of PN 730 had been complied with in spirit and in substance because:

- (a) the Auditor considered the verbal protest to management as an acceptable alternative;
 - (b) writing to the audit committee would also give rise to a Clarification Announcement being made;
 - (c) both actions (i.e. verbal protest to management and writing to the audit committee) would generate the same result, being the issue of a Clarification Announcement.
33. However, whilst the Respondents' actions might be attempts to correct the erroneous figures and contents in the Original Announcement, they did not constitute disassociating themselves from the Statement. The Statement remains uncorrected to this date.
34. Paragraph 39 of PN 730 requires auditors to take active measures when become aware that the directors have released a preliminary announcement of results with which they disagree, which is to write to the audit committee not only regarding the discrepancies, but also to request the audit committee to inform the regulators of such matter. The fact that the subsequent Clarification Announcement was made does not remove the auditors' responsibility under Paragraph 39 of PN 730.
35. The above demonstrated the Auditor's lack of due care in relation to the Statement in the Company's announcements.
36. As such, the Respondents failed to comply with sections 100.5(c) and 130 of the Code.

DECISION AND ORDER

37. The Committee notes that it has a wide discretion on the sanctions it might impose. Each case is fact sensitive and the Committee is not bound by the decision of the previous committees.
38. The Committee takes consideration of the following:

- i. The Respondents did not participate in the errors in the financial results contained in the Original Announcement.
- ii. The Respondents claimed to have advised management that the Original Announcement was not ready for release.
- iii. The Respondents claimed to have been in contact with the Company regarding the Original Announcements after they discovered that it had been released.

39. The Committee also takes consideration of the following:

- i. The Respondents did not request the Company to remove the words in the Original Announcement which referred to the results "having been agreed by the Group's auditors" despite having the opportunity to do so.
- ii. If, as the respondents stated, they had advised the management of the Company that the Original Announcement was not ready for release, and subsequently found that the Company had released it, paragraph 39 of PN 730 would apply.
- iii. The Respondents did not take steps to disassociate themselves from the false or materially misleading statement in the Original Announcement
- iv. The Respondents did not comply with PN730 in that they did not write to the audit committee of the Company regarding the errors in the announcement.
- v. The Respondents' obligation to comply with PN730 is not negated by their own view that the audit committee was duly informed of the flaw in the Original Announcement and accordingly their own belief that it was not necessary to take any further action.

40. The Committee further considers that the public are entitled to expect that practicing accountants and corporate practices discharge their duties and carry out their work to the highest standards of probity, independence and

competence. If public confidence is shaken then the price to be paid by the entire accountancy profession is very high.

41. Therefore, the Committee believes that it is important that public confidence in the accountancy profession is maintained and that any sanctions imposed by the Committee should also act as deterrence to others that non-compliance by accountancy professionals to the high standards expected of them would be viewed seriously and would exact suitably severe sanctions.
42. The Committee takes consideration of the Respondents' submissions and notes that there is no past disciplinary record for the First Respondent.
43. The Committee also takes consideration of the Respondents' submissions but notes that the history of regulatory records of the Second Respondent should not be ignored. The repeated non-compliances of the Second Respondent on more than one occasion appears to suggest that there was a persistent failure by the Second Respondent to adhere to professional standards in their work.
44. Having considered all relevant facts of the Complaint, the parties' submissions, the Respondents' conduct throughout the proceedings and their personal circumstances, the Committee considers that a financial penalty of **HK\$35,000** as sanction against the First Respondent and **HK\$50,000** as sanction against the Second Respondent are appropriate.
45. It is also considered that reprimand against all Respondents will be a proper sanction to signify the Committee's disapproval of their conduct.
46. As for costs, the Committee considers that the sum of **HK\$93,078** was incurred reasonably and should be borne by the Respondents.
47. The Committee makes the following ORDERS:
 - i) The Respondents be reprimanded under section 35 (1)(b) of the PAO;

- ii) The First Respondent do pay a penalty of **HK\$35,000** pursuant to section 35 (1)(c) of the PAO;
- iii) The Second Respondent do pay a penalty of **HK\$50,000** pursuant to section 35 (1)(c) of the PAO;
- iv) The Respondents do pay the costs and expenses in relation to the proceedings of the Complainant in total sum of **HK\$93,078** under section 35 (1)(iii) of the PAO.

Dated the 5th day of September 2019

Ms. DOE, Julianne Pearl

Chairman

Mr. CHAN, Chak Ming

Member

Mr. CHOW, Tak Sing, Peter

Member

Mr. FAN, Hoi Kit

Member

Mr. CHU, Yau Wing, Jason

Member