

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

Mr. Ho Pak Tat (A21013)	1 ST RESPONDENT
Ms. Yuen Suk Ching (A02183)	2 ND RESPONDENT
HLM CPA Limited (M0481)	3 RD RESPONDENT

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

Members: Ms. LAU Shing Yan, Zabrina (Chairman)
Miss CHAN Ka Man
Mr. HUI Ching Yu
Mr. TSANG Chi Wai
Mr. CHU Yau Wing, Jason

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. Ho Pak Tat (“**Ho**”), Ms. Yuen Suk Ching (“**Yuen**”) and HLM CPA Limited (“**HLM**”) (collectively the “**Respondents**”).

2. On 7 September 2018, the Complainant submitted a complaint (“**the Complaint**”) to the Council of the Institute on the basis 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. Upon the Respondents’ admission of the Complaint, the parties were asked to make written submissions on sanctions and costs. On 25 April 2019, the Complainant and the Respondents made their respective submissions on sanctions and costs.

Background

4. On 23 May 2017, the Financial Reporting Council (“**FRC**”) referred to the Institute a complaint concerning possible non-compliances with accounting requirements and auditing irregularities in relation to the audit of the consolidated financial statements of a listed entity¹, Chinese Energy Holdings Limited (stock code: 8009) (“**Company**”) and its subsidiaries (collectively the “**Group**”) for the year ended 31 March 2015 (“**2015 Financial Statements**”).
5. HLM issued an unmodified opinion on the 2015 Financial Statements on 22 June 2015 (“**2015 FS Issue Date**”). Ho was the engagement director and Yuen was the engagement quality control reviewer (“**EQCR**”) of the audit.
6. The case related to the calculation of loss per share (“**LPS**”) for the year ended 31 March 2015 as disclosed in the 2015 Financial Statements.

¹ The Company is listed on the GEM Board of the Hong Kong Stock Exchange.

7. The 2015 Financial Statements also disclosed a subsequent event which was that the Company held an extraordinary general meeting (“**EGM**”) on 19 June 2015 and approved the following resolutions:
- (1) a share consolidation of two issued shares into one consolidated share (“**Share Consolidation**”); and
 - (2) an open offer of 1,080,010,750² offer shares (“**Offer Shares**”) at the subscription price of HK\$0.15 per Offer Share on the basis of one Offer Share for each consolidated share in issue (“**Open Offer**”).
8. The Company failed to comply with Hong Kong Accounting Standard 33 *Earnings per Share* (“**HKAS 33**”) when considering the impact of Share Consolidation and Open Offer in respect of the LPS calculations for the year ended 31 March 2015 in the 2015 Financial Statements.

The Complaints

Complaint 1: Against Ho and HLM

9. Section 34(1)(a)(vi) applies to Ho and, through section 34(1AA) of the PAO, applies to HLM, in that they did not comply with sections 100.5(c) and 130.1 of the *Code of Ethics for Professional Accountants* (the “**Code**”) for their failure to maintain professional knowledge and skill and act diligently and in accordance with applicable technical and professional standards in respect of the LPS as reported in the 2015 Financial Statements.

Complaint 2: Against Yuen

10. Section 34(1)(a)(vi) of the PAO applies to Yuen in that, as the EQCR of the audit, she did not comply with sections 100.5(c) and 130.1 of the Code for her failure to maintain professional knowledge and skill and act diligently and in accordance with

² 1,080,010,750 Offer Shares was incorrectly disclosed as 1,080,010,780 in Note 34(i) to 2015 Financial Statements

applicable technical and professional standards in respect of the LPS as reported in the 2015 Financial Statements.

Facts and Circumstances in Support of Complaint 1

11. In the 2015 Financial Statements, the LPS for 2015 was disclosed as HK\$0.0044.
12. The 2015 LPS was restated to HK\$0.0092 in the Company's consolidated financial statements for the year ended 31 March 2016 ("**2016 Financial Statements**"). Note 16 to 2016 Financial Statements disclosed that the 2015 weighted average number of shares³ was adjusted for the effect of the Share Consolidation and the Open Offer.
13. According to the 2015 audit working papers, both the Share Consolidation and Open Offer were taken into account in the calculation of the weighted average number of shares for LPS purposes; which showed two entries dated 19 June 2015 (the date of the EGM) relating to the Share Consolidation and Open Offer respectively, offsetting each other creating a nil effect.
14. There were two non-compliances in the LPS calculations: (a) the Open Offer should not be taken into account, in accordance with paragraphs 21, 26, 29 and 64 of HKAS 33; and (b) only the bonus element of the Offer Shares should be adjusted in calculating the weighted average number of shares, in accordance with paragraphs 26, 27(b) and A2 of HKAS 33.
15. *Inclusion of the Open Offer:* The Open Offer should not be taken into account in the LPS calculations in accordance with paragraph 21 of HKAS 33, given that at the 2015 FS Issue Date of 22 June 2015, (a) the conditions precedent of the underwriting agreement for completion of the Open Offer were yet to be fulfilled, such as the last day for termination of the underwriting agreement would be

³ The weighted average number of shares at 31 March 2015 was 1,669,688,000 per note 15 to 2015 Financial Statements; this figure was restated to 800,058,000 per note 16 to 2016 Financial Statements.

3 August 2015, when the Open Offer became unconditional; and (b) the Offer Shares were issued subsequently on 6 August 2015.

16. Based on the above, the FRC arrived at a basic/diluted LPS in the amounts of HK\$0.0088 for 2015, which was double of what were reported in the 2015 Financial Statements.
17. HLM defended the inclusion of the Open Offer on the basis of their interpretation of paragraphs 21 and 64 of HKAS 33. HLM considered the 2015 FS Issue Date as an appropriate “*alternate date...to truly reflect the effects of all key events⁴ that materially triggered the changes to the Company's ordinary or potential ordinary shares outstanding*”. As such, the Share Consolidation and Open Offer “*were for all intents and purposes considered by the Company as one continuing arrangement*”.
18. The above is not a valid interpretation of paragraph 21 of HKAS 33, which provides that shares are usually included in the weighted average number of shares from the date consideration is receivable, which is generally the date of their issue. The Offer Shares were issued subsequent to the 2015 FS Issue Date, and there is no justification to include them in the weighted average number of shares.
19. *The Bonus Element:* Further, in calculating the weighted average number of shares, all the Offer Shares were taken into account, when in fact only the bonus element of the Open Offer should be included, under paragraphs 26, 27(b) and A2 of HKAS 33.
20. The price of the Offer Shares on 27 July 2015 (\$0.15) used in the determination of the adjustment factor to the weighted average number of shares was above the market price of the Company's shares (\$0.138). This indicated that there was no bonus element in the Open Offer.

⁴ The key events comprised: (1) the passing of the resolutions in respect of the Share Consolidation, the Open Offer, and the Underwriting Agreement; and (2) the Share Consolidation having become effective on 22 June 2015 (2015 FS Issue Date).

21. As such, the Open Offer should have no effect on the weighted average number of shares for the purpose of LPS calculations for 2015. The LPS remains at HK\$0.0088 even if the Open Offer was taken into account.
22. In taking into account all the Offer Shares (as opposed to the bonus element only), it would suggest that the Offer Shares were issued at nil consideration. But in fact, the Offer Shares were offered at \$0.15 per share and was a capital raising activity.
23. Based on the above, the LPS for 2015 as reported in the 2015 Financial Statements was significantly misstated.
24. LPS/EPS⁵ is one of the key indicators for equity investment decisions; and a fundamental calculation in the financial statements.
25. The above demonstrated that Ho and HLM did not maintain professional knowledge and skill and act diligently and in accordance with applicable technical and professional standards in respect of the LPS as reported in the 2015 Financial Statements, and therefore failed to comply with sections 100.5(c) and 130.1 of the Code.

Facts and Circumstances in Support of Complaint 2

26. There was no evidence that the EQCR had identified any irregularities or non-compliances as explained in paragraphs 11 to 25 above, despite HLM claiming that the EQCR had discussed and reviewed the LPS disclosures. Thus, Yuen failed to maintain professional competence and due care when discharging her responsibilities as the EQCR.
27. As such, she failed to comply with sections 100.5(c) and 130.1 of the Code.

⁵ EPS = earnings per share

The Parties' Submissions

28. In his submissions on sanctions and costs, the Complainant brought to the Committee's attention the Respondents' prior disciplinary records.
- (1) In D-14-0988F (September 2016), there were audit deficiencies in the audit work carried out in respect of convertible bonds of a listed company, involving breaches of Hong Kong Standard on Auditing ("HKSA") 500 and HKSA 700. Yuen as the engagement partner was reprimanded and fined \$70,000. The firm involved was HLM & Co. (i.e. the predecessor of HLM) but it was not a respondent in the proceeding due to its cessation of business in 2012.
 - (2) In C-16-1174F (February 2017), a disapproval letter was issued to Yuen concerning the inappropriate waiver of a shareholder loan of HK\$16 million in the financial statements of a listed company. The firm involved was again HLM & Co., although no disapproval letter was issued to it due to its cessation of business.
 - (3) There is on-going disciplinary proceeding against Yuen in D-16-1178F, involving audit deficiencies in a listed audit. The firm involved was HLM & Co., but it is not a respondent for the same reason stated above.
 - (4) Ho does not have any prior disciplinary record.
29. The Complainant submits that, for Yuen and HLM, this is a case of persistent failure to comply with professional standards, given their prior disciplinary records. It is further pointed out that, although the LPS was only misstated for one year (i.e. 2015), the re-stated LPS for FY2016 was still incorrectly calculated.
30. The Respondents, on the other hand, submit that the Complaint relates to the exercise of professional judgment in interpreting HKAS 33, in that they took into account the terms and conditions

attaching to the share issue and reached the view that the consolidation and Open Offer were one continuing arrangement. There are no allegations made against the Respondents relating to ethical issues or the receipt of inappropriate benefits, and their non-compliance was not (i) deliberate or intentional; (ii) the result of carelessness or recklessness; and (iii) did not involve depriving or appropriating property belonging to others.

31. The Respondents further invite the Disciplinary Committee to consider the following mitigating factors:

- (1) The Complaint relates to a single breach of HKAS 33 which is technical in nature;
- (2) The error in calculating the LPS was an isolated incident and relates to the 2015 Financial Statements only;
- (3) The financial impact of the error in the LPS calculation was minimal given that the difference in the loss between the correct figure of HK\$0.0088 and the figure of HK\$0.0044 included in the 2015 Financial Statements was only HK\$0.0044;
- (4) While the EPS/LPS is one of the key indicators for equity investment decisions, the difference of HK\$0.0044 was an insignificant number and should not have had a significant impact on the investment decision of any investor;
- (5) To illustrate the above point, the Company subsequently issued a clarification announcement on 14 June 2017 to clarify the LPS amount and no significant fluctuation was noted in relation to the Company's share price before or after the issuance of the clarification of announcement. This shows that the impact of the insignificant difference in LPS amounts was minimal;
- (6) In view of the points at (3) to (5) above, the Respondents do not believe there was any loss or harm caused to the existing

shareholders of the Company or any other potential investors as a result of the error in the LPS calculation;

- (7) The error in the LPS calculation was not committed intentionally or deliberately and did not occur as a result of carelessness or recklessness by the Respondents. In fact, the LPS calculation was prepared after thorough consideration of the timing of the Open Offer. The audit team exercised professional judgement in deciding how to approach the issue;
- (8) The Respondents did not receive any benefits as a result of the alleged error in the LPS calculations; and
- (9) No allegations of dishonesty have been made against the Respondents.

Decision

32. In determining the appropriate sanctions to be imposed, the Disciplinary Committee have borne in mind the provisions in Parts 5.2 and 5.3 of the Guideline to Disciplinary Committee for Determining Disciplinary Orders. We agree with both the Complainant and the Respondents that the appropriate order for sanctions should involve a reprimand, financial penalty and payment of costs.
33. With regard to the level of financial penalty to be imposed, we note that the previous disciplinary records of Yuen and HLM's predecessor all concerned listed companies' audits and the breaches involved were not insignificant. The Committee agrees with the Complainant that such records, together with the present case, demonstrate the two respondents' persistent failure to comply with professional standards.
34. In respect of the present case, regardless of whether the error was committed due to carelessness or after thorough consideration, it is common ground that the Respondents had failed to properly comply

with the provisions of HKAS 33 in the calculation of the Company's LPS. The Disciplinary Committee agrees with the Complainant that a high level of public interest is involved as it concerns the audit of a listed company. The investing public are entitled to expect members of the profession to discharge their duties with reasonable competence in particular when they furnish the most basic information (such as EPS and LPS) concerning the financial status of the listed entities. Although the magnitude of misstatement is miniscule in absolute dollar terms (i.e. HK\$0.0044), the LPS had been significantly misstated at 50% of its correct value. These matters have increased the seriousness of the breach.

35. Having considered all the relevant facts of the Complaint and the parties' submissions, the Committee takes the view that each of Yuen and HLM should be fined a sum of HK\$100,000, and Ho should be fined a sum of HK\$50,000.
36. As for costs, the total sum of HK\$99,269 is reasonable in light of the fact that the Complainant only received the Respondents' signed admission documents on 19 March 2019, when the Complainant had already started working on the Complainant's Case which was due to be filed on 28 March 2019. The Respondents should pay such costs to the Complainant.
37. The Disciplinary Committee makes the following order:
 - (1) The Respondents be reprimanded under section 35(1)(b) of the PAO;
 - (2) Ho do pay a penalty of HK\$50,000 pursuant to section 35(1)(c) of the PAO;
 - (3) Yuen do pay a penalty of HK\$100,000 pursuant to section 35(1)(c) of the PAO;
 - (4) HLM do pay a penalty of HK\$100,000 pursuant to section 35(1)(c) of the PAO; and

- (5) 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\$99,269 under section 35(1)(iii) of the PAO.

Dated the 15th day of August 2019.

Ms. LAU Shing Yan, Zabrina
Chairman

Miss CHAN Ka Man
Member

Mr. TSANG Chi Wai
Member

Mr. HUI Ching Yu
Member

Mr. CHU Yau Wing, Jason
Member