

**The Institute of Chartered Secretaries and Administrators (“ICSA”)
and
The Hong Kong Institute of Chartered Secretaries (“HKICS”)**

**Decision of the Disciplinary Tribunal (“DT”) Concerning the Complaint
Against Ms Chan Ka Yan
(the “Respondent”) dated 22 November 2017**

Pursuant to ICSA Byelaw 24.1 and HKICS Article 25.2, the Investigation Group (“IG”) of both ICSA China Division and HKICS by its report dated 7 July 2017 recommended to the DT for consideration of the allegation of false representation as a HKICS member by the Respondent (“the allegation”).

On 7 January 2015, the Respondent was admitted to the graduateship of the Institute (i.e. ICSA and HKICS), and she had been a graduate since then.

On 3 August 2015, an application for Associate membership was received from the Respondent. On 7 October 2015, a letter was issued from the Registrar to the Respondent requesting her authorisation for verifying employment records stated on her application on or before 16 October 2015. On 20 June 2016, an enquiry call on such was received from the Respondent by the Secretariat and the said letter dated 7 October 2015 was emailed to the Respondent again by the Secretariat. Pending further information, the Associate membership application of the Respondent had been put on hold since 3 August 2015.

On 17 October 2016, a complaint was lodged by Kim Eng Securities (Hong Kong) Limited (“Kim Eng Securities”), being the former employer of the Respondent against the Respondent (“the complaint”). Subsequently the resume of the Respondent tendered to Kim Eng Securities dated 28 January 2016 (“the resume”) was further provided by Kim Eng Securities to the IG on 18 May 2017 in support of the complaint, it was expressly stated therein that the Respondent was a “Member of the HK Institute of Chartered Secretaries (HKICS)”.

In response to the investigative enquiries of IG, the Respondent provided documents and explanations to IG dated 20 December 2016, 28 June 2017 and 29 June 2017. She by her letter dated 28 June 2017 enclosed copies of her ICSA graduateship certificate and her HKICS graduate card.

The IG submitted to the DT a report dated 7 July 2017 and the report was considered by the DT at its meeting held on 19 July 2017.

The Respondent was then advised of the DT hearing by a letter dated 18 August 2017 from the Chairman of the DT that a DT hearing about the Respondent’s case would be held on 22 November 2017.

On 21 August 2017, the Respondent called the Secretariat and expressed that she would like to resign from the Institute and would not settle the 2017/2018 annual subscription. On 25 August 2017, the Respondent’s resignation form dated 14 August 2017 enclosing her ICSA graduateship certificate and HKICS graduate card were received.

The Respondent did not provide explanations to DT, no submission or information on the DT hearing attendance was received from the Respondent as of 13 November 2017. The 2017/2018 annual subscription of the Respondent remained outstanding from 1 October 2017.

The DT met on 19 July 2017 to consider the present case and the DT hearing was conducted on 22 November 2017.

Having reviewed the complaint, the findings of the IG and the explanations given by the Respondent, the DT has found and decided the following:

1. The DT considered that the Respondent was alleged to be intentionally falsely represented herself as a HKICS member when at the material time she had been well aware that her membership application had been put on hold.
2. The DT considered that prima facie at the material time, the Respondent knowingly and wilfully made false representations as a HKICS member for a financial motive, which she knew to be false and untrue.
3. The DT considered that the Respondent confirmed that she was the complaint subject and her former employment with Kim Eng Securities in her reply email to IG dated 20 December 2016.
4. The DT considered that the dishonest intent in the allegation was obvious, instead of being reckless or negligent.
5. The DT considered that the resume tendered by the Respondent was relied by Kim Eng Securities and the Respondent was subsequently employed with financial advantage obtained for herself.
6. The DT considered that the allegation of false representation as a HKICS member of the Respondent was of a nature that its commission by the Respondent constituted a failure to act in good faith, thereby dishonest and unethical conduct.
7. The DT considered that integrity was the core to the good professional conduct and ethics required and expected of both a graduate of the Institute and the chartered secretarial profession, which was the quality of being honest and having strong moral principles. Graduates of the Institute were required to avoid any involvement in any unethical, misleading, illegal or obscure behaviour.
8. The DT considered that professional behaviour required that graduates of the Institute to act in a way which conformed to the relevant laws of the respective jurisdiction, thereby, also to pay regard to all regulations which may have a bearing on their actions.
9. The DT thus considered that allegation of false representation as a HKICS member of the Respondent was proven on the balance of probabilities.
10. The Respondent is in breach of ICSA Byelaw 24.8(c) as she has failed to demonstrate the good professional conduct and ethics required and expected of a graduate of the Institute, thus she has failed to uphold the code of professional conduct and ethics.

11. The Respondent is also in breach of ICSA Byelaw 24.8(d) and HKICS Article 25.1(c) as the standard of professionalism shown by the Respondent fell below that required of a graduate of the Institute, thereby affects the reputation, status and interests of the Institute. Thus she has behaved and conducted herself in a manner that is likely to be discreditable to HKICS.
12. The Respondent is also in breach of ICSA Byelaw 24.8(f) and HKICS Article 25.1(d) that she has broken any of ICSA Byelaws or Charter or regulations and acted in breach of HKICS Articles or any rules, regulations, codes of practice or conduct, directions or instructions made or established by or under the authority of the Council.
13. For these reasons, the Respondent's conduct in this case to have fallen below the standards expected of a graduate of the Institute. Accordingly, she was found guilty of professional misconduct as charged.
14. The Respondent's breaches involved serious lapses of integrity, and her conduct fell seriously below the standard of integrity, honesty, trustworthiness and competence expected of a graduate of the Institute, which clearly warranted a removal of the Respondent from the graduateship register.
15. Having taken into account of the admission of the Respondent and the circumstances of the case, pursuant to ICSA Byelaw 25.1 and HKICS Article 27.1 the DT **ORDERED** that
 - (a) the Respondent shall be removed from graduateship register commencing after the expiry of the time limit for her to appeal this decision or if she appeals, the disposal of her appeal by the Appeal Tribunal; and
 - (b) such removal shall be given publicity in which the Respondent shall be named via the Institute's journal, website and/or other official channels.
16. Pursuant to ICSA Byelaw 26 and HKICS Article 28, the Respondent shall be entitled to appeal against the decision or any part of it by submitting, in writing, a request that the matter should be considered by the Appeal Tribunal, specifying in the request the grounds to be relied on in support of the appeal. The notice of intention to appeal must be received by HKICS within 28 days of her having been advised of the decision of DT and may be given to the person by whom the notice of the decision was given or to the Secretary of HKICS or any person authorised to receive such notice. If the notice of intention to appeal is given by telephone or other electronic method, it must be confirmed in writing within 14 days.

Dated the 22nd of November 2017

Chairman, Disciplinary Tribunal