

**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 Mr Mok Wing Kai Henry
(the “Respondent”) dated 19 June 2018**

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 8 November 2017 recommended to the DT for consideration of the Respondent for professional misconduct in having been found culpable of market misconduct by providing materially false or misleading information to the public into dealings in the shares of Greencool Technology Holdings Limited between 2001 and 2005 in breach of section 277(1) of the Securities and Futures Ordinance (“SFO”) in the report dated 29 December 2016 (for chapters 1 to 8) and dated 23 June 2017 (for chapter 9), of the Market Misconduct Tribunal (“MMT”) (the “MMT case/ decision” or “MMT report”).

The Respondent provided documents and explanations to HKICS.

The Respondent by his letter dated 6 February 2018, stating that his said letter served as a notice to appeal to the DT decision of a DT hearing to be held for his case.

On 26 March 2018, the Respondent informed the DT of his withdrawal of appeal and confirmed his attendance in person at the DT hearing to be held on 25 April 2018 by email.

The DT hearing was conducted on 25 April 2018 when the Respondent attended in person with his legal advisor from Messrs. C.L. Chow & Macksion Chan, Solicitors.

At the DT hearing held, the Respondent confirmed that he had no intention to appeal to the MMT decision and the relevant Growth Enterprise Market (GEM) Listing Rules relevant to the post of “Qualified Accountant” at the material time were queried.

After the DT hearing, the relevant GEM Listing Rules at the material time were located and the Respondent was invited to make further submission on these to the DT.

The Respondent by his email dated 21 May 2018 enclosed his further submission dated the same date which was further considered by the DT.

The DT met on 22 November 2017 and 25 April 2018 to consider the present case.

Having reviewed the MMT report, the GEM Listing Rules and the explanations given by the Respondent, the DT has found and decided the following on 19 June 2018:

1. The Respondent has not appealed against the MMT decision which is binding.
2. The Respondent was the Company Secretary and Qualified Accountant of a Hong Kong listed company during the material time and his conduct and performance in discharging his company secretary duties and obligations were criticised by the MMT in the published MMT report, which reads as follows:-

“Para 50. In addition, as the Qualified Accountant and Company Secretary of Greencool (the listed company concerned), it was Mok’s duty to keep minutes and resolutions of board and committee meetings so that these could be inspected by any director. Accordingly, Mok was and/or ought to have been aware of the undisclosed bank loans and therefore had and/or ought to have had valid reasons to question the accuracy of the bank loans actually reported.”

3. The Respondent was found negligent by the MMT in failing to discharge his professional duties, and specifically pointed out the responsibility of him to discharge the company secretary duties and obligations, which reads as follows:-

“Para. 400. While it cannot be said that, if Mr Henry Mok had fulfilled his duties with greater professionalism in respect of this matter, any evidence of malfeasance would have been revealed, this evidence of passivity on his part, his acceptance of a material diminution of his responsibilities, is, in the opinion of the Tribunal, supporting evidence of the fact that he knew he had been allocated a limited role by the Executive Directors, one that undermined the proper exercise of his duties, and evidence of the fact that he was prepared to accept this diminution.”

“Para. 428. (The Respondent) was prepared to take a very diminished role, one that effectively kept him away from any real possibility of discovering the fraud. By his passivity, he was prepared to undermine his professional obligations.”

4. The Respondent was further found negligent and criticised by the MMT in failing to perform his obligations to protect and act in the best interests of the listed company concerned which reads as follows:-

“Para. 428. (The Respondent) held a position of high seniority as the financial controller and company secretary, it being his obligation to protect, promote and act in the best interests of the Greencool Group (the listed company concerned) as a whole. He failed to do so.”

5. Regarding the performance of the Respondent as the Qualified Accountant and/or financial controller of the listed company concerned, the MMT found that the Respondent in accepting a material reduction in the nature and extent of his responsibilities without any formal public notice, was a deceit on the stock market authorities and on the market even it was not intended.
6. The Respondent was thus found by the MMT to be negligent as to whether the information was false or misleading, thereby enabling other specified persons in the MMT decision to provide false and misleading annual results of the listed company concerned during the material time to defraud the investing public, as the grim consequences.
7. The matter considered at the DT for the time being was whether the professional company secretary or the chartered secretarial profession duties and obligations were discharged and performed competently by the Respondent with due care, skills, diligence and in good faith.
8. Under all circumstances, the Respondent as a company secretary of the listed company concerned was accountable and with duties owed to its stakeholders, shareholders and the investing public.

9. Under all circumstances, the Respondent was expected to observe and uphold the highest standards of professional conduct and ethical behaviour in all his activities. Notably, the Respondent should have acted as the “conscience of the company” with diligence in carrying out his duties strictly according to all statutory rules and regulations, thereby safeguarding the legitimate interests of all relevant parties, in particular when public interests were of concern.
10. The DT considered that to minute down and to keep good records were clearly one of the important duties of the company secretary, in which the expert witness of the Respondent at the MMT case also agreed that this should have been done by the Respondent.
11. The DT considered that the Respondent being both the Company Secretary and Qualified Accountant of the listed company concerned, should be regarded as among its senior management. The DT considered that senior management of companies must not accept arrangements which would unreasonably interfere with the proper discharge of their duties.
12. The DT considered and agreed with MMT that the Respondent being both the Qualified Accountant and Company Secretary with the respective dual professional qualifications, was apparently rested with a reasonably expected higher standard and duty of care of the responsibilities imposed and rested on him as one person, in particular, both were in the direction of good corporate governance.
13. The DT considered that the Respondent should have taken reasonable and proper steps to carefully scrutinise and question the financial integrity of the listed company concerned with his dual professional skepticism, so to guard against fraud.
14. The DT considered and agreed with the MMT that the Respondent was continually negligent in the discharge of his imposed responsibilities including his exercise of supervision power and control.
15. The DT considered that the Respondent had been experienced enough at the material time, thus he should have been able to have conducted himself up to the high professional standards reasonably expected of him in his position.
16. The MMT had ordered that the Respondent shall not be or continue to be, directly or indirectly a director in the management of a listed company for a period of three years from 1 October 2017 and that the Hong Kong Institute of Certified Public Accountants be informed of the MMT findings and be recommended to take disciplinary action against the Respondent.
17. The DT noted that HKICS Code of Professional Conduct has come into existence since 1994 and the relevant provisions applicable in the present case have remained in substance the same although the latest version of the code has been last updated in 2006.
18. The HKICS Code of Professional Conduct requires members to observe the highest standards of professional conduct and ethical behaviour in all their activities and to uphold the objectives of HKICS. In particular, members shall abide by the letter and spirit of the Memorandum and Articles of Association of HKICS and any codes or byelaws made pursuant thereto; to uphold the ICOSA’s Charter and comply with its Byelaws; at all times be cognisant of their

responsibilities as professional persons towards the wider community; to maintain good corporate governance, management and efficient administration in their professional capacity as a Chartered Secretary; and exercise probity, honesty and diligence in carrying out their duties and responsibilities.

19. The DT had found that the complaint against the Respondent was proved, in particular, the Respondent's failure or neglect to discharge his duties and obligations as the Qualified Accountant and Company Secretary of the listed company concerned to the high professional standards reasonably expected of a person in his positions, thereby in breach of:

- (i) ICSA Byelaw 24.8(c) that he has failed to uphold the code of professional conduct and ethics;
- (ii) ICSA Byelaw 24.8(d) that he has behaved, by doing something or not doing something, in a way considered by the DT to bring ICSA or the profession into disrepute;
- (iii) HKICS Article 25.1(c) that he has conducted himself whether by act or default in a manner that might or is likely to be discreditable to HKICS; and
- (iv) HKICS Article 25.1(d) that he has acted in breach of the Memorandum and Articles of Association of HKICS or any rules, regulations, codes of practice or conduct, directions or instructions made or established by or under the authority of the Council.

20. Having taken into account of the admission of the Respondent and the mitigating factors, pursuant to ICSA Byelaw 25.1 and HKICS Article 27 the DT **ORDERED** that

- (a) the Respondent's membership shall be suspended for 2 years commencing after the expiry of the time limit for him to appeal this decision or if he appeals, the disposal of his appeal by the Appeal Tribunal;
- (b) the Respondent shall pay a fine of HK\$25,000; and
- (c) the Respondent be publicly reprimanded, and this decision shall be published publicly via the Institute's website and/or other official channels, with such news be included in the Institute's journal.

21. 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 him 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 19th of June 2018

Chairman, Disciplinary Tribunal