

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

**Decision of the Disciplinary Tribunal (“DT”) Concerning the Complaint
Against Mr Chow Chi Wa
(the “Respondent”) dated 26 November 2019**

For the purpose of this Decision, The Chartered Governance Institute is referred as The Institute of Chartered Secretaries and Administrators (“ICSA”).

Pursuant to ICSA Byelaw 23.1 and HKICS Article 25.2 for the time being in force, the Investigation Group (“IG”) of both China Division of The Chartered Governance Institute and HKICS by its report dated 11 July 2019 recommended to the DT for consideration of the Respondent for professional misconduct in having been found contravened the Rules Governing the Listing of Securities on the GEM of the Exchange (“GLR”) by the GEM Listing Committee of The Stock Exchange of Hong Kong Limited (“HKEX LC”) in a disciplinary action against the Respondent, per the HKEX LC listing enforcement notice dated 30 October 2018 and the news release dated 30 October 2018 (the “HKEX decision”). In the HKEX decision, the HKEX LC found that the Respondent breached (i) GLR 5.01(6); (ii) GLR 5.20 in his capacity as the compliance officer; and (iii) GLR 5.01 and GLR 5.03 in his capacity as an executive director.

The Respondent provided documents and explanations to HKICS.

The DT met on 16 July 2019 to consider the present case.

The Respondent by his written submission to DT dated 11 October 2019 via Messrs. ONC Lawyers acting on his behalf, provided explanations to the DT.

The Respondent by his above written submission to DT dated 11 October 2019, also confirmed his attendance in person at the DT disciplinary hearing originally scheduled for 26 November 2019 with his legal adviser from Messrs. ONC Lawyers. On 29 October 2019, the medical report in relation to the Respondent’s health condition was further provided to the DT via Messrs. ONC Lawyers.

The DT by a letter dated 1 November 2019 informed the Respondent on the penalties to be imposed asking for the Respondent’s further submission. The Respondent by his letter to DT dated 4 November 2019 via Messrs. ONC Lawyers acting on his behalf, expressed no objection on the DT penalties and agreed that DT could dispose of the case without an oral disciplinary hearing.

The DT by a letter dated 15 November 2019 informed the Respondent of the DT decision to be made and the oral DT disciplinary hearing was not required.

Having reviewed the HKEX decision, the GLR and the explanations given by the Respondent, the DT has found and decided the following at the meeting on 26 November 2019:

Background

1. The Respondent has not appealed against the HKEX decision which is binding.
2. The Respondent did not dispute the facts as set out in the HKEX decision and expressed no objection to the findings, sanctions and directions proposed by the HKEX LC against him.
3. The Respondent was (1) company secretary; (2) compliance officer; (3) chief executive officer; (4) executive director; and (5) authorised representative of a Hong Kong listed company (the “company”) during the material time and his conduct and performance in discharging his duties and obligations were criticised by the HKEX LC in the published HKEX decision.
4. The Respondent was also a certified public accountant in addition to being a Chartered Secretary.
5. The Respondent was found by HKEX LC that he breached GLR 5.01(6) by failing to perform the followings :-
 - (a) keeping the other board members regularly informed and updated about the significant assets, business and financial performance of the company;
 - (b) ensuring that reasonable steps were taken to minimise the risk of loss or non-receipt of mail and monitor the receipt of the hardcopies of the monthly statements and in turn to monitor the investments as the significant assets; and
 - (c) ensuring accurate financial reporting and adequate internal controls in place of the company.
6. The HKEX LC further found the followings in relation to the internal control of the company :-
 - (a) lack of guidelines or policy governing the investments and its risk management assessment;
 - (b) inadequate system and procedures for the board’s regular monitoring of business and financial performance;
 - (c) lack of written procedures or policy governing financial reporting; and
 - (d) lack of policy and procedures governing the notification of an executive director’s absence from office for health reasons to all other executive directors and such contingency arrangements.
7. The Respondent was found by HKEX LC that in his capacity as the compliance officer breached GLR 5.20 which reads as follows, and were clearly related to the imperative company secretary duties and obligations :-
 - (a) “the compliance officer’s responsibilities must include, as a minimum, advising on and assisting the board of directors of the issuer (the company) in implementing procedures to ensure that it complies with the GLR”; and
 - (b) “there was no evidence that the Respondent had given assistance and advice to the company on the implementation of procedures to ensure the company’s GLR compliance.”

8. The Respondent was found by HKEX LC that in his capacity as one of the directors, collectively and individually contravened GLR 5.01 and GLR 5.03 by failing to perform the followings, which reads as :-
 - (a) “responsible for ensuring the company’s full compliance with the GLR”;
 - (b) “to fulfil their fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law, including the duty (under GLR 5.01(6)) to apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the company”; and
 - (c) “at a minimum, they (the directors) must take an active interest in the company’s affairs and obtain a general understanding of its business and must follow up anything untoward that comes to their attention”.
9. The DT considered that the Respondent also breached the director’s undertakings to the HKEX.
10. The DT considered that the HKEX LC decided that the breaches committed by the Respondent were serious.
11. 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.
12. Under all circumstances, the Respondent as a professional company secretary was expected to observe and uphold the highest standards of professional conduct and ethical behaviour in all his activities. Notably, the Respondent as the company secretary should have acted as the “conscience of the company”, having the imperative guardian role in governance and ethics, with due and reasonable care, skills and diligence in discharging 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.
13. The DT further considered that the Respondent as the company secretary, should be responsible for reporting to and advising the board on governance matters, to give advice to the board to ensure that the company complied with all the rules of good corporate governance were also clearly central to the Respondent’s responsibilities as the company secretary, and that the HKEX LC concluded that there was no evidence that the Respondent had given assistance and advice to the board on the implementation of procedures to ensure GLR compliance.
14. The DT considered and agreed with HKEX LC that adequate procedures must be put in place to ensure accurate and regular reporting of the delegated function to the board to keep all directors fully informed and updated in respect of its performance, which was the core duty as the company secretary of the company.
15. The DT considered that the safekeeping of records and documentation was apparently within the important duties of the Respondent as the company secretary.
16. The DT considered that the Respondent should have taken reasonable and proper steps to carefully scrutinise and question the financial integrity of the company with his dual professional skepticism, so to guard against the integrity and reliability of financial information, being accurate and complete in all material respects and not misleading.

17. The DT considered that the Respondent ought to have been aware of and noticed the error in the early stage by applying the company secretary's enquiring mind, and should have detected, investigated and considered the error, and further informed and advised the board on such.
18. The DT considered that when listed companies were involved, public interests and the interest of the investing public were both at stake. The DT further considered that the interests of the shareholders of the company and the investing public had been prejudiced in terms of their right to receive accurate and complete and not misleading information to enable them to make informed investment decision.
19. The DT considered and agreed with HKEX LC that directors must take an active interest in the company's operations and affairs. The DT further considered and agreed with HKEX LC that directors must ensure listed issuers have appropriate and effective internal controls in place to ensure compliance with financial reporting obligations as well as integrity and reliability of financial information.
20. The DT considered and agreed with HKEX LC that the case demonstrated that there was over-reliance on one director who assumed multiple key management positions to deal with day-to-day management and financial reporting function.
21. The DT considered and agreed with HKEX LC that a specific function may be delegated by the directors to appropriately qualified staff but not ultimate responsibility for performance of that function.
22. Under all circumstances, the Respondent as the company secretary, and further holding other key positions of the company was accountable and with duties owed to its stakeholders, shareholders and the investing public.
23. The DT considered that the Respondent was negligent in the discharge of his imposed responsibilities including his exercise of supervision power and control.
24. The ICSA Code of Professional Ethics and Conduct (the "Code") for the time being in force requires members to deliver the high standard of professional competence throughout one's working life and to uphold the requirements within the Royal Charter and Byelaws.
25. In particular, the core principle of integrity of the Code requires that members shall be honest and have strong moral principles, which included avoiding involvement in any unethical, misleading, illegal or obscure behaviour; considering the ethical issues and groups or stakeholders which are affected in the decision making, and being impartial, independent and informed and avoiding bringing the profession into disrepute.
26. The core principle of high standard of service/professional competence of the Code requires that members maintain the professional knowledge and skills which are required to perform the role he was employed to carry out; communicate effectively with his clients, colleagues and stakeholders to ensure that they are able to make informed decisions; act within his level of competence, and if an admission to his client that he is unable to perform a task is required then this should be communicated effectively.
27. The core principle of professional behaviour of the Code requires that members act in a way which conforms to the relevant laws of the jurisdiction they are residing and/or performing business transactions in and to pay regard to all regulations which may have a bearing on their actions.

28. The DT considered the fact that the Respondent failed to discharge his duties as the company secretary and other key management positions he held at the company and was disciplined and publicly sanctioned by the HKEX LC, thereby bringing the Institute and the profession into disrepute in breach of the core principle of integrity of the Code.
29. 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 various positions.
30. The DT considered that the breaches committed by the Respondent were within the scope of his core responsibilities as the company secretary and as of a member of the Institute being governance professionals.
31. The DT considered that the membership of the Institute of the Respondent was stated in the yearly annual reports of the company from year 2013 to year 2018.
32. The DT considered that the Respondent had complied with the HKEX LC sanction and direction on 24 hours of training on GLR compliance, director's duties and corporate governance matters within the stipulated time limit. The DT further considered that there were other remedial actions afterwards taken by the Respondent in a timely manner.
33. The DT found that Respondent was negligent in performing his duty as the company secretary and fell below the standard expected of a Chartered Secretary or member of the Institute, thereby was criticised in the HKEX decision published in the public domain, thus bringing the profession and Institute to disrepute.

Other circumstances

34. The DT considered the mitigating factors and circumstances, including the health condition of the Respondent.

The decision of the Disciplinary Tribunal

35. 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 company secretary and compliance officer, in addition to being an executive director of the company, with his dual professional qualifications to the high professional standards reasonably expected of a person in his positions, and thereby criticised and disciplined by HKEX LC, and he is in breach of:
 - (i) ICSA Byelaw 23.8(c) that he has failed to uphold the code of professional conduct and ethics;
 - (ii) ICSA Byelaw 23.8(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 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.

36. Having taken into account of the admission of the Respondent, the circumstances of the case and the mitigating factors, pursuant to ICSA Byelaw 24.1 and HKICS Article 27.1 for the time being in force the DT **ORDERED** that
- (a) the Respondent shall pay a fine of HK\$25,000;
 - (b) the Respondent shall pay the costs of HK\$3,000; and
 - (c) the Respondent be publicly reprimanded, and this decision shall be published publicly via HKICS' website and/or other official channels, with such news be included in the HKICS' journal.
37. Pursuant to ICSA Byelaw 25 and HKICS Article 28 for the time being in force, 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 his 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 26 November 2019

Chairman, Disciplinary Tribunal