

DT Case No. 2023-03(M)  
Decision No. DT 03/2023

**DISCIPLINARY TRIBUNAL  
OF THE HONG KONG CHARTERED GOVERNANCE INSTITUTE  
AND HONG KONG/CHINA DIVISION OF THE CHARTERED GOVERNANCE INSTITUTE**

**DECISION  
relating to a complaint against  
Mr. Yuen Wai Ho (No. #4020824)**

Date of Hearing: 13 November 2023  
Date of Decision: 12 December 2023

1. In this Decision, The Hong Kong Chartered Governance Institute is referred to as the '**Institute**'. The Institute is, and represents, the Hong Kong/China Division of The Chartered Governance Institute ('**CGI**') in this Decision.

**A. Background**

2. On 11 November 2002, the Respondent was successfully elected as an Associate Member of the CGI (formerly The Institute of Chartered Secretaries and Administrators) and the Institute (formerly The Hong Kong Institute of Chartered Secretaries).
3. The Respondent undertook to observe and be bound by the provisions of the Institute Articles, CGI Charter and Byelaws, and the rules of the Institute for the time being in force. The HKCGI Code of Professional Ethics and Conduct ('**HKCGI Code**') comprises part of the Institute's rules relating to members' discipline binding on the Respondent.
4. The Institute's Secretariat, on routine monitoring, found that the Respondent was named in a disciplinary action by The Stock Exchange of Hong Kong ('**Exchange**') under the Exchange News Release ('**News Release**') and a related Statement of Disciplinary Action ('**SODA**'), both dated 5 December 2022.

***Disciplinary action by the Exchange***

5. From the News Release and SODA, the Respondent was reportedly a non-executive director of REXLot Holdings Limited (the 'Company') at the date of the Company's delisting and formerly the Company's independent non-executive director ('INED'). Between 2013 and 2019, during his tenure as a director of the Company, the Company and its directors committed several rule breaches in connection with the Company's online lottery business, including:
- (a) Inaccurate information in the Company's financial statements for the years ended 31 December 2013 and 31 December 2014.
  - (b) Non-disclosure of financial assistance provided by the Company.
  - (c) The Company's delay in publishing its financial results.
  - (d) The Company's failure to comply or explain its deviation from a Code Provision.
  - (e) Breach of director duties.
6. It was also stated that the Company directors failed to fulfil their fiduciary duties and duties of skill, care and diligence as may reasonably be expected of persons of their knowledge and experience. The three principal areas identified by the Listing Committee were reported as follows:
- (a) First, the directors failed to adequately safeguard the Company's substantial investment in a joint venture in the nascent online lottery industry in the PRC or exercise effective control or management over it. Pursuant to their joint venture agreement, the Company could place direct representatives on the boards of the relevant companies but decided not to do so. Additionally, upon the regulation of the industry by PRC authorities, the Company suspended its settled plans to make further investments, which materially affected the Company's ability and power to control and direct the joint venture.
  - (b) Second, the Respondent failed to institute safeguards to ensure the recoverability of deposits provided between 2014 and 2018, resulting in a loss of approximately HK\$1.7 billion. The Company has failed to secure any of the deposits with written agreements, relying instead entirely on counterparties' confirmation. After that, the Company, aside from instructing agents, did not take any substantive steps to recover the deposits.
  - (c) Third, the Respondent failed to ensure compliance with the annual results and reports timelines stipulated by the Listing Rules, resulting in further default (the 'Outstanding Results and Reports').

7. Another executive director of the Company was primarily responsible for the online lottery business and earnest money and deposit payments. However, the other directors, including the Respondent, ratified and approved the deposits without requesting information about the due diligence conducted or whether any safeguards had been established.
8. Under Rules 3.08, 3.16 and 13.04, the Board of Directors of an issuer is collectively responsible for the issuer's management and operations, and the directors are collectively and individually responsible for its compliance with the Listing Rules.
9. Directors of listed issuers are required to provide to the Exchange a Declaration and Undertaking with regards to Directors in the form of Appendix 5B to the Listing Rules, under which each director, among other things, undertakes that he shall:
  - (a) Comply to the best of his ability with the Listing Rules.
  - (b) Use his best endeavours to procure the Company's compliance with the Listing Rules.

**B. IG Investigations, etc.**

***IG investigation***

10. The Institute's Secretariat referred the matter to the Institute's Investigation Group of the Institute/CGI ('IG') for consideration as to whether it was appropriate to launch a disciplinary investigation against the Respondent. At the meeting on 21 February 2023, the IG resolved to conduct a disciplinary investigation against the Respondent under Institute Article 25.2 and CGI Byelaw 23.1.
11. Based on the information from the News Release, the IG sent the Respondent a letter dated 24 February 2023 to confirm whether the Respondent was the person named under the News Release and SODA, which he confirmed he was on 7 March 2023.
12. Having confirmed the Respondent's identity, the IG commenced its investigation and sent the Respondent an inquiry letter dated 23 March 2023 containing several questions, allowing the Respondent to provide relevant information to the IG's investigation.
13. On 22 April 2023, the Respondent replied, providing his response letter to the listed breaches in the SODA. In brief, the Respondent, in his letter, submitted that:
  - (a) The directors have always acted in the Company's best interests, pursuing transactions intended to benefit the Company's business. The unexpected outcome resulted from external factors out of the directors' control.

- (b) The directors sufficiently safeguarded the Company's investments in the joint venture and over the deposits, and the directors took sufficient steps to ensure the Company's compliance with its financial reporting obligations.
- (c) The Exchange did not give sufficient weight to the unique operating features of the PRC lottery industry, the sudden regulatory changes, the impact of the COVID-19 pandemic, and the winding up of the Company's affairs and operations. These factors impacted the Company's investments in the joint venture, recovery of the deposits, and the publication of Outstanding Results and Reports.
- (d) The Respondent is a non-executive director and was not involved in the Company's daily operations. The breaches were against the directors collectively, as he could not make any decisions on his own. The Respondent submits it is inappropriate for the Institute to judge whether an individual is in breach of the Code based on the collective decisions of the Board of Directors. Further, the breaches were mainly caused by the management of the Company, who ran the business day to day.
- (e) The Company's directors have had clear compliance records, and the Respondent has served as a director since 2004. They have also participated in appropriate continuous professional development activities.
- (f) The penalty imposed by the Exchange was 18 hours of training on regulatory and legal topics and did not prohibit the Respondent from acting as a director of any listed company. The Respondent believes that individuals in breach of the Institute's Code cannot be qualified as directors of any listed company.

### **IG's Observations**

- 14. Under the HKCGI Code, members should, among other things, always be cognizant of their responsibilities as professional persons towards the wider community. Thus, the IG is of the view that the breaches of the Listing Rules are relevant to the Institute's discipline and requisite professional standards.
- 15. It was noted that the Respondent provided timely assistance throughout the Investigation Group's investigation.
- 16. Based on the material facts as set out under the SODA attributed to the Respondent, after independently considering the Respondent's responses, the IG, from its own independent assessment, came to a *prima facie* view that:
  - (a) **Lapse in integrity.** The Respondent failed to uphold the core principle of integrity by failing to act professionally in his business dealings, as the Respondent displayed a lack of understanding and appreciation of his role and responsibilities as a director of the Company in this instance.

(b) **Lapse in professional competence.** The Exchange identified that the Company and its directors committed several rule breaches at the relevant time in connection with the Company's online lottery business. These go to the core duty of the Respondent as an Institute member to maintain the professional knowledge and skills required to perform his role and to act within his level of competence, which is a matter of professional competence and professional behaviour, the breach of which could bring discredit/disrepute to the Institute (under the Institute Articles/ HKCGI Code), and disrepute to CGI (under CGI Byelaws).

17. Regarding the Exchange's disciplinary action and the Respondent's attitude and performance during the IG's disciplinary investigation, the IG observed that:

(a) **Exchange's disciplinary action.** An important aspect of the Exchange's disciplinary action was criticism against the deficiencies in the Respondent's and the other directors' management of the Company, in breach of the Listing Rules. The Respondent and the other directors failed to adequately safeguard the Company's interests, comply with reporting obligations, and were in breach of director duties. The Exchange's findings are set out under paragraph 6 and the penalties against the Respondent in paragraph 13(f). The IG also independently considered the Respondent's submission that the directors have always acted in the Company's best interests, taking sufficient steps to safeguard the Company's investments and comply with financial reporting obligations along with the other matters set out under paragraph 13.

(b) **IG's disciplinary investigation.** The Respondent had cooperated with the IG's investigation.

#### ***IG's findings***

18. The IG, based on the contents of the News Release and SODA and the Respondent's responses, came to the independent view that there were *prima facie* breaches by the Respondent of the following provisions under the HKCGI Code applicable to members:

#### **Integrity**

- (a) Acting professionally in their business dealings.
- (b) Displaying a proper understanding and appreciation of their role and responsibilities.
- (c) Avoiding bringing the profession into disrepute.

#### **High standard of service/professional competence**

- (a) Maintaining professional knowledge and skills required to perform the role that members are employed to carry out.

- (b) Communicating effectively and promptly with their employers, clients, colleagues and stakeholders to ensure that the said parties are able to make informed decisions.
- (c) Upholding the requirements of the CGI Charter, CGI Byelaws, and HKCGI Articles of Association made under it.

### **Professional behaviour**

- (a) Paying regard to all regulations that may have a bearing on their actions and to adhere to the CGI Byelaws and HKCGI Articles of Association. The failure of such may result in disciplinary proceedings.

#### *IG Charges laid to the Disciplinary Tribunal ('DT')*

19. The IG discussed and considered this case on 27 June 2023 and resolved that:

- (a) There was a *prima facie* case which merits and warrants the consideration of taking disciplinary action against the Respondent on whether there were potential breaches of the Institute Articles and CGI's Byelaws by the Respondent.
- (b) A referral to the DT was required.

#### *IG Report to the DT*

20. On 2 August 2023, the IG prepared a report ('**IG Report**') under the Institute Article 25.2 and CGI Byelaw 23.1, which contained details of its investigation, the relevant supporting materials, and the grounds for bringing charges against the Respondent. The IG concluded that there were *prima facie* breaches by the Respondent of the Institute Articles and CGI Byelaws.
21. Under the IG Report, the IG asked the DT to determine whether the Respondent was in breach of the following:

#### *Breach of Codes, Rules & Regulations:*

- (a) **CGI Byelaw 23.8(f)** - had broken any CGI's byelaws, Charter, or Regulations.
- (b) **Institute Article 25.1(d)** - had breached any of the Articles of Association of the Institute or any rules, regulations, codes of practice or conduct, directions or instructions made or established by or under the authority of the Council.

#### *The disrepute of the Institute or Profession:*

- (a) **CGI Byelaw 23.8(d)** - had behaved, by doing something or not doing something, in a way considered by the DT to bring the CGI or the profession into disrepute.

- (b) **Institute Article 25.1(c)** - had conducted himself, whether by act or default, in a manner that might or was likely to be discreditable to the Institute or the profession.

### **C. Disciplinary Hearing**

22. On 21 August 2023, the DT, having considered the IG Report, resolved that there was a case against the Respondent to answer and decided to convene a disciplinary hearing which was fixed for 13 November 2023. On 25 August 2023, the Notice of Disciplinary Hearing (with the IG Report) was served to the Respondent by the Secretariat, and the Respondent was reminded that he could provide a written submission and/or attend the hearing.
23. The Respondent replied on 31 October 2023 and informed the DT that he decided to cease to be a member of the Institute, having stopped paying the subscription when it fell due on 30 September 2023, stating that the Disciplinary Hearing would be unnecessary. The Secretariat informed the Respondent on the same day that the Institute Articles preclude resignation where a disciplinary case had commenced and reminded the Respondent that it would be in his interest to offer any further explanation or mitigating circumstances.
24. The Respondent responded on the same day that he definitely can't stop the Institute from wasting the money and time to continue the Disciplinary Hearing and understands the Institute's need to do what it needs to do, but that he is no longer interested in such proceedings and would not participate in any part of it. Further, the Institute can do whatever it wants or remove him from the membership register even though he was supposed to be removed by the end of September.
25. At the DT's disciplinary hearing on 13 November 2023, the charges were read and discussed by the DT, and the submissions by the Respondent were considered.
26. The DT considered:
- (a) The material facts are disclosed in the Exchange's News Release and SODA dated 5 December 2022.
  - (b) The Respondent's submissions in a reply email dated 22 April 2023.
  - (c) The IG Report, dated 2 August 2023.
  - (d) The Respondent's reply emails dated 31 October 2023.

### **D. Decisions**

The DT **DECIDES** that the charges against the Respondent, as set out under the IG Report, are established to the extent set out below.

*Breaches of Code, Articles & Byelaws*

27. The first core principle of the HKCGI Code that all members, graduates, and students must adhere to is 'Integrity'. The DT notes that under the HKCGI Code, displaying integrity requires members, including the Respondent, to be acting professionally in their business dealings and displaying a proper understanding and appreciation of their roles and responsibilities.
28. The DT considered what a reasonable non-executive director would have done when making such large deposits between 2014 and 2018. The DT found the complete reliance on a purported mutual understanding between the parties without even a written agreement wholly insufficient. The DT was satisfied that a reasonable director would have inquired further on the safeguards implemented to protect the deposits, on the due diligence conducted on the counterparty, and made substantive steps to recover the deposits.
29. Accordingly, the Respondent failed to act professionally in his business dealings and did not display a proper understanding and appreciation of his role and responsibilities after due consideration of his submission on 22 April 2023. The DT makes it clear that nothing turned on the Respondent's reply emails of 31 October 2023, which might have arisen out of frustration.
30. The second core principle of the HKCGI Code that all members, graduates, and students must adhere to is a **'High standard of service/professional competence: A high standard of service or professional competence should be delivered throughout members' working life. This involves an understanding of relevant technical, professional and business developments. Professional competence also takes account of the wider implications and expectations of our members'**. This includes acting within their level of competence.
31. The DT found the Respondent's submissions on his capacity as a single individual of the wider Board of Directors and a non-executive director of the Company unconvincing as the Respondent was part of a unitary board. Directors are expected to follow up with management, exercise due diligence in requesting information, and contribute to establishing appropriate safeguards, which the Respondent as an Institute/CGI member should have the level of competence to be aware of, and where the DT finds a breach.
32. The breach of the HKCGI Code also amounts to breaches of the Institute Articles and CGI Byelaws in breach of the fourth core principle of the HKCGI Code. Also, the breaches might be discreditable to the Institute or the profession, and the DT considered the Respondent's behaviour from the failures identified under paragraph 28 may be considered by the DT to bring the CGI or the profession into disrepute.
33. For the above reasons, the DT finds that the Respondent is in breach of the following provisions of the Institute Articles and CGI Byelaw:



- (a) **Institute Article 25.1(c)** – he had conducted himself, whether by act or default, in a manner that might or was likely to be discreditable to the Institute or the profession.
- (b) **Institute Article 25.1(d)** - had breached any of the Articles of Association of the Institute or any rules, regulations, codes of practice or conduct, directions or instructions made or established by or under the authority of the Council, namely the HKCGI Code.
- (c) **CGI Byelaw 23.8(d)** - had behaved, by doing something or not doing something, in a way considered by the DT to bring the CGI or the profession into disrepute.
- (d) **CGI Byelaw 23.8(f)** - had broken any CGI's byelaws, Charter, or Regulations.

## E. Sanctions

- 34. The DT noted that the Respondent was an Associate Member for around 21 years and a non-executive director at the material time of this case.
- 35. It was also recognised that the Respondent was directed to 18 hours of training on regulatory and legal topics, and he was not prohibited from acting as a director of any listed company.
- 36. Taking into consideration the above factors, the DT **ORDERS** that:
  - (a) The Respondent shall be **publicly reprimanded** under the Institute Article 27.1(f) and CGI Byelaw 24.1(a) to indicate disapproval for his lapses in the standards expected of HKCGI members and that this decision shall be published publicly via the Institute's website and/or other official channels, with such news to be included in the Institute's journal;
  - (b) The Respondent shall pay the Institute's costs of HK\$10,000 under the Institute Article 27.1(g) and CGI Byelaw 24.1(b) within 28 days from the date that notice is served to the Respondent. In case there is a failure to pay the Institute's costs, the Institute shall be at liberty to commence recovery actions and
  - (c) This Decision shall take effect after the expiry of the period to file an appeal with the Appeal Tribunal ('AT') or, in case of an appeal, until after the exhaustion of the appeal procedures.

*Note: According to the Institute Article 28 and CGI Byelaw 25, 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 AT, specifying in the request the grounds to be relied on in support of the appeal. The Institute must receive the notice of intention to appeal within 28 days from the date of the Respondent being advised of this DT decision. It may be given to the person by whom the notice of the Decision was given, to the Secretary of the Institute, or any person authorised to receive such notice. If the notice of intention to appeal is provided by telephone or other electronic methods, it must be confirmed in writing within 14 days.*



Duffy Wong FCG(CS, CGP) HKFCG(CS, CGP)  
Chairman, the Disciplinary Tribunal  
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