

DT Case No. 2021-01(M)  
Decision No. DT 05/2021

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

**DECISION  
relating to a complaint against  
Mr Cheng Po Yuen ACG HKACG (membership no. 4036009)**

Date of Hearing: 6 December 2021  
Date of Decision: 28 January 2022

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

**A. Background**

Facts of Complaint

2. The Institute's Secretariat, on its routine monitoring, discovered that Mr Cheng Po Yuen (the 'Respondent'), an Associate of the Institute, was disciplined by the Disciplinary Committee of the Hong Kong Institute of Certified Public Accountant ('HKICPA') as disclosed in its HKICPA's Reasons for Decision dated 22 December 2020 and Press Release dated 2 February 2021. The Respondent, as the engagement director of Zenith CPA Limited, expressed an unmodified auditor's opinion on the 2011 Financial Statements of China Healthcare Holdings Limited (now known as China Health Group Limited) where he failed to perform sufficient audit procedures and prepare adequate documentation.

HKICPA's Discipline

3. Under the HKICPA's disciplinary case, the Respondent did not dispute the facts and admitted the charges laid against him. The Disciplinary Committee accordingly determined that the Respondent had breached the Code of Ethics for Professional Accountants ('HKICPA Code of Ethics'), i.e. failure or negligence to observe, maintain or otherwise apply the fundamental principle of professional competence and due care, and ordered against the Respondent, a public reprimand, a fine of HK\$150,000 and payment of costs of HK\$75,000.

**B. Investigation & Observation by the IG**

IG commenced investigation

4. The above information was referred by the Institute's Secretariat to the Investigation Group of the



Institute and CGI (the 'IG') for consideration as to whether it was appropriate to launch a disciplinary investigation against the Respondent. The IG resolved, at its meeting on 16 March 2021, to launch a disciplinary investigation against the Respondent under the Institute Article 25.2 and CGI Byelaw 23.1.

#### IG's Observations

5. In March 2021, the IG commenced its disciplinary investigation upon the Respondent. The IG identified the following material facts from the HKICPA's disciplinary case for its own consideration as to whether there were lapses in standards expected of Chartered Secretaries or Chartered Governance Professionals, as follows:
  - (a) *Lapse in standard* – The Respondent's deficiencies in audit procedures and documentation constituted breaches of the HKICPA Code of Ethics.
  - (b) *Lapse in due diligence* – The Respondent's over-reliance on representations of audit client's management without performing adequate procedures to obtain sufficient corroborative evidence and documenting the work and outcomes.
  - (c) *Delegation issues* – The Respondent's inappropriate appointment of engagement quality control reviewer, with only 1-year post qualification experience who was too young to take up this role.
  - (d) *Repeated offence* – There was a prior complaint against the Respondent relating to non-compliance with professional standards by the HKICPA which was dealt with by way of a Resolution by Agreement with agreed terms, namely a reprimand and a fine of HK\$25,000.

#### Respondent's reply to IG

6. Following the identification of material facts, the IG considered it necessary to follow up with an inquire with Respondent. On 8 April 2021, an inquiry letter was sent to him requesting his reply. The Respondent provided with a 4-page written submission on 15 May 2021 with a summary of facts and his responses to the IG, admitting that:
  - (a) He made breaches in June 2018 and accepted the HKICPA's sanctions in December 2020 without any appeal.
  - (b) He was not challenged by the HKICPA in respect of professional integrity, behaviour and conduct.
7. The IG, having considered the material facts from the HKICPA's discipline, and the Respondent's submission, determined on 22 June 2021 that there were prima facie breaches of the Institute's professional rules and requirements that warranted further consideration by the Disciplinary Tribunal of the Institute and CGI (the 'DT').

### **C. IG Report to the DT**

8. On 9 August 2021, the IG prepared a report (the 'IG Report') under the Institute Article 25.2 and CGI Byelaw 23.1, which contained details of its investigation, the supporting materials it considered relevant, and the grounds for bringing charges against the Respondent. The IG concluded that there were prima facie breaches, and other potential breaches by the Respondent, of the Institute Articles and CGI Byelaws by the Respondent.
9. Under the IG Report, the IG asked the DT to determine whether the Respondent :

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

- (a) **CGI Byelaw 23.8(c)** - had failed to uphold the code of professional conduct and ethics.
- (b) **CGI Byelaw 23.8(f)** - had breached any of the CGI's bye-laws or Charter or Regulations.
- (c) **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.

*Disrepute of the Institute or Profession*

- (d) **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.
- (e) **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.

## **D. Disciplinary proceedings**

### Before Disciplinary Hearing

- 10. On 23 August 2021, the DT, having considered the IG Report, resolved that there was a prima facie case against the Respondent and decided to convene a disciplinary hearing of the present case. On 31 August 2021, the Respondent was served with a copy each of the IG Report and the 'Notice of Disciplinary Hearing'. The Respondent informed the DT on 1 September 2021 that he opted out of providing any further submissions or attending the hearing. He asserted that his prior submission was sufficient for the DT to understand the present case.
- 11. On 28 October 2021, the DT fixed the hearing date for 6 December 2021, and informed the Respondent accordingly.

### At Disciplinary Hearing

- 12. At the DT's disciplinary hearing on 6 December 2021, at 6:00 pm, at the Institute's Office, the DT considered:
  - (a) The material facts as disclosed in the HKICPA's Reasons for Decision dated 22 December 2020 and Press Release dated 2 February 2021 as summarised under paragraph 5 above,
  - (b) The IG's observations in the IG Report, and
  - (c) The Respondent's submission on 15 May 2021.

## **E. Assessment of Charges**

### Finding of Facts

- 13. The DT notes that the Respondent, through his submission of May 2021, admitted his breaches and accepted the HKICPA's sanctions without any appeal. In this connection, the DT accepts and adopts the finding of the facts under the IG Report.

### Defence

- 14. Aside from the representations made under the Respondent's letter of 15 May 2021, he was not challenged by the HKICPA in respect of professional integrity, behaviour and conduct, there was no defence to the Charges laid has been made by the Respondent as he chose neither to file any written submission nor give any verbal representation through his attendance at the hearing.

### Breaches of Code, Articles & Byelaws

- 15. Having considered all relevant matters, the DT finds that there are breaches of the Institute's and CGI's Code of Professional Ethics and Conduct ('Code of Conduct'), the Institute's Articles & CGI's Byelaws.
- 16. The keeping of proper documentation is a core skill of the Chartered Secretary. Accordingly, the Respondent's breaches of the Institute's Code of Conduct are identified as follows, namely, he: **(a)** failed to exercise due care and diligence in performing their duties and responsibilities; and **(b)** failed to be at all times cognisant of his responsibilities as a professional person towards the wider community (especially in keeping proper documentation for his audit work). Also, his failure in displaying a proper understanding and appreciation of his responsibilities (especially for being an engagement director but wrongfully delegated his audit work to junior staff) is his another breach of the Institute's and CGI's Code of Conduct.

17. In addition to the above, the Respondent's actions or omissions were likely to be discreditable to the Institute or the profession and/or the Respondent behaved, by doing something or not doing something, as considered by the DT to bring CGI or the profession into disrepute. The DT finds that there are breaches not only to the Code of Conduct but also the Institute's Articles and CGI's Byelaws.

## F. Decisions & Penalties

### Decision

18. The DT **DECIDES** that the charges against the Respondent, as set out under the IG Report, are established and the Respondent by reason of the matters set out under paragraph 5 above was in breach of:

#### *Breaches of Codes, Rules & Regulations*

- (a) **CGI Byelaw 23.8(c)** – he had failed to uphold the code of professional conduct and ethics
- (b) **CGI Byelaw 23.8(f)** – he had breached any of the CGI's bye-laws or Charter or Regulations
- (c) **Institute Article 25.1(d)** – he had acted in breach 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

#### *Disrepute of the Institute or Profession*

- (d) **CGI Byelaw 23.8(d)** – he 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, and
- (e) **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

### Sanctions

19. The DT understands that the Respondent was subject to HKICPA's sanctions including a public reprimand and a fine and payment of costs.
20. The DT notes no fraud, integrity or dishonesty was involved, and the name of the Institute and profession was not mentioned in the HKICPA's discipline.
21. The DT takes into consideration that the Respondent had been co-operative and admitted his breaches.
22. The DT notes that the Respondent was a Chartered Secretary with 7 years' experience at the material time of this case but with an instance of prior similar breaches in 2015. The Respondent was disciplined by the HKICPA in August 2018, as discussed in paragraph 5(d), while the IG had not taken action on it in October 2018. The case was closed eventually in March 2019 as the IG considered it as a minor audit breach.
23. Taking account into consideration the above factors, the DT **ORDERS** that:
- (a) The Respondent shall be **reprimanded** under the Institute Article 27.1(f) and CGI Byelaw 24.1(a), to indicate disapproval for his lapse in standard as a Chartered Secretary and Chartered Governance Professional,
  - (b) The Respondent shall **pay the Institute's costs** of HK\$5,000 under the Institute Article 27.1(g) and CGI Byelaw 24.1(b) within 28 days from the date that notice is served on 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 be **published** on the Institute's website, with a summary in the CSj journal, and shall take effect after the expiry of the period to file an appeal with the Appeal Tribunal ('AT') or, in case of there being an appeal, until after 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 notice of intention to appeal must be received by the Institute within 28 days from the date of the Respondent being advised of this DT decision and may be given to the person by whom the notice of the decision was given or to the Secretary of the Institute or any person authorized to receive such notice. If the notice of intention to appeal is given 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  
The Hong Kong Institute of Chartered Secretaries  
China Division of The Chartered Governance Institute