Proceedings No.: D-19-1514F

IN THE MATTER OF

A Complaint made under Section 34(1A) of the Professional Accountants Ordinance (Cap.50) ("the PAO")

BETWEEN

The Registrar of the Hong Kong Institute of Certified Public Accountants	COMPLAINANT
AND	
ZHONGHUI ANDA CPA Limited (M0282)	FIRST RESPONDENT
Mr. Sze Lin Tang, CPA (A14573)	SECOND RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants

Members: Ms. DOE, Julianne Pearl (Chairman)
Mr. FAN, Hoi Kit
Mr. IP, Chiu Yin
Mr. BAO, King To, Raymond

Date of Reasons for Decision: 5 January 2024
Date of Decision on Sanctions and Costs: 19 June 2024

DECISION ON SANCTIONS AND COSTS

Introduction

1. On 5 January 2024 the Disciplinary Committee ("**DC**") handed down its Reasons for Decision ("**Decision**"), finding that Complaints 1 and 2 against the First Respondent and Complaint 3 against the Second Respondent as the engagement quality control reviewer ("**EQCR**") were proven. Parties were directed to file their respective submissions on sanctions and costs.

2. The Complainant filed its submission on sanctions and costs on 26 January 2024.

3. The Respondents filed their submission on sanctions and costs on 16 February 2024.

4. The Disciplinary Committee has received and considered the written submissions on sanctions and costs of both the Complainant and the Respondents.

5. The First Respondent and the Second Respondent were the auditor and the EQCR respectively for the audit of the consolidated financial statements of Ko Yo Chemical (Group) Limited (a company whose shares are listed on The Stock Exchange of Hong Kong Limited (stock code: 00827) (the "**Company**") and its subsidiaries ("**Group**") for the year ended 31 December 2015 ("**2015 Financial Statements**").

6. The complaints were raised based on the findings of an investigation by the Audit Investigation Board ("**AIB**") of the Financial Reporting Council ("**FRC**"). Complaints 1 and 2 against the First Respondent as auditor and Complaint 3 against the Second Respondent as EQCR were proven. Complaint 1 concerns the First Respondent's failure or neglect to observe, maintain or otherwise apply professional standards in the audit of the 2015 Financial Statement in respect of the Put Option. Compliant 2 concerned the impairment assessment of the same audit engagement. Complaint 3 concerned the Second Respondent's failure or neglect to observe, maintain or otherwise apply professional standards in the EQC review of the same audit engagement.

7. The DC has a wide discretion on sanctions under section 35 of the Professional Accountants Ordinance ("PAO"). Under sections 73(1) and (2) to the Accounting and Financial Reporting Council (Transitional and Saving Provisions and Consequential Amendments) Regulation, for complaints already submitted before the transition of the regulatory power from the Hong Kong Institute of Certified Public Accountants ("HKICPA" or the "Institute") to the Accounting and Financial Reporting Council, the complaint is continue to be dealt with under the pre-amended PAO as if the 2021 Amending Ordinance had not come into operation.

8. Reference has been made to the Guideline to Disciplinary Committee for Determining Disciplinary Orders ("Guideline"). It is noted that the Guideline mentions that sanctions are to be not only proportionate to the nature of the failure and the harm or potential harm caused by the breach, but also with the aim to: (a) protect public interest; (b) deter non-compliance with professional standards; (c) maintain and promote public confidence in the profession; and (d) declare and uphold proper standards of conduct and performance.

9. Paragraph 4.1 of the Guideline sets out recommendations steps in determining a disciplinary order: (1) determine the seriousness of the offence; (2) determine appropriate sanctions based on case severity before considering other factors; and (3) consider impact of other factors on sanctions (i.e. past similar cases, aggravating and/or mitigating factors).

Seriousness

10. The public interest involved in the audit of a listed company is acknowledged by the Respondents. The Respondents have submitted that the failures as found by the DC in relation to one audit year do not reasonably undermine the overall public confidence in the audit profession in auditing the financial statements of listed companies. The DC reviews the seriousness of the offence in question and notes it is committed as to the audit of one financial year or more. As stated in the Decision, the nature of the failure involves fundamental requirements including professional scepticism and proper documentation. In relation to the Second Respondent, the DC has expressed its views regarding the failure of the Second Respondent to discharge his duty as the EQCR. Overall we believe that the Complaints should be regarded as "serious".

Sanctions

11. The Guideline provided suggested starting points for sanctions of an offence and for a serious offence:

- Reprimand; and/or
- Financial penalty; and/or
- Cancellation of practising certificate ("PC") and not reissued for up to 1 year; and/or
- Temporary removal from the register; and/or
- Payment of costs and incidentals.

12. Section 35 of the PAO gives power to the DC to make such order as it thinks fit with regard to the payment of costs and expenses of and incidental to the proceedings, whether of the Institute or of the Complainant. Under section 35(1)(d)(ii), the DC may order a respondent to pay to the FRC a sum which the DC considers appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the FRC.

13. Under the Guidelines for the Chairman and the Committee on Administering the Disciplinary Committee Proceedings Rules, the DC has a discretion to determine the extent to which costs should be recoverable. The discretion must be exercised reasonably as follows:

    a. Save where there is good reason to do otherwise, the Committee should award costs to the successful party in the proceedings (i.e. costs follow the event).

    b. The starting point in any award of costs should be the costs (i.e. indemnity costs) incurred by the successful party, subject to the DC being satisfied that the costs were reasonably and necessarily incurred. These costs may include those costs and expenses reasonably incurred by the Complainant and/or the FRC, whether in relation to or incidental to any investigation carried out before the proceedings were instituted or for the purposes of the proceedings, as the DC considers appropriate. The DC may reduce the amount awarded to the extent it considers costs to have been incurred unnecessarily or extravagantly. In deciding what reduction is reasonable, the DC may consider being guided by the practices of the courts in civil proceedings.

14. The Complainant submits that the costs incurred by the Complainant and the Clerk as well as the costs of the FRC in the present proceedings should be fully recovered. The Respondents have raised a set of mitigating factors which the DC has fully considered. The Complainant has not made any request regarding the PC of the Second Respondent.

Disciplinary Order

15. The DC considers that, given that all the complaints were proven against the Respondents, the Respondents shall pay the costs and expenses of and incidental to the proceedings of the Institute (including the costs and expenses of the DC).

    Accordingly, the DC orders as follows:

    (1) The First Respondent and the Second Respondent be reprimanded under section 35(1)(b) of the PAO;

    (2) The First Respondent and the Second Respondent jointly and severally pay a penalty of HK$ 200,000 under section 35(1)(c) of the PAO;

    (3) The First Respondent and the Second Respondent jointly and severally pay the costs and expenses of and incidental to the investigation incurred by the FRC of HK$179,819 under section 35(1)(d)(ii) of the PAO; and

    (4) The First Respondent and the Second Respondent jointly and severally pay the costs and expenses of and incidental to the proceedings under section 35(1)(iii) of the PAO:

        (i) HK$37,949 being the costs and expenses of and incidental to the proceedings incurred by the Clerk to the DC; and

        (ii) HK$198,800 being the costs and expenses of and incidental to the proceedings incurred by the Complainant.

This order shall take effect on the 42nd day from the date of this Decision on Sanctions and Costs.

Ms. DOE Julianne Pearl
Chairman

Mr. FAN, Hoi Kit
Member

Mr. IP, Chiu Yin
Member

Mr. BAO, King To, Raymond
Member