

IN THE MATTER OF

A complaint made under section 34(1A) of the Professional Accountants Ordinance (Cap. 50)

BETWEEN

The Registrar of the Hong Kong Institute of Certified Public Accountants COMPLAINANT

AND

KPMG (0035) 1st RESPONDENT

YU Yuk Ping, June (A27591) 2nd RESPONDENT

YU Wai Sum (A18931) 3rd RESPONDENT

Decision of a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants constituting

Members: Ms. LAU Shing Yan, Zabrina (Chairman)
Mr. LAM Yin Shing, Donald (Member)
Mr. MUI Arthur (Member)
Mr. CHAN Wai Tong, Christopher (Member)
Mr. TSAI Wing Chung, Philip (Member)

DECISION ON SANCTIONS AND COSTS

Introduction

1. By a decision dated 29 April 2021 (the “**Decision**”), this Committee gave decision on the Respondents’ substantive liability in respect of the

complaints made in these disciplinary proceedings. Parties were then directed to file submissions on sanctions and costs, and they did so on 1 June 2021 (for the Complainant) and 16 June 2021 (for the Respondents) respectively. This is the Committee's decision on sanctions and costs. Unless otherwise stated, we adopt the same abbreviations used in the Decision.

2. The Complainant has proposed the following orders as to sanctions and costs:
 - (1) the Respondents be reprimanded under section 35(1)(b) of the PAO;
 - (2) KPMG do pay a penalty of \$500,000 (for the first and third complaints), R2 do pay a penalty of \$300,000 (for the second complaint), and R3 do pay a penalty of \$200,000 (for the fourth complaint) under section 35(1)(c) of the PAO; and
 - (3) the Respondents do pay, on a joint and several basis, the costs and expenses in relation or incidental to the investigation reasonably incurred by the FRC under section 35(1)(d)(ii) of the PAO and the costs and expenses of and incidental to the proceedings of the Complainant (including the costs and expenses of the Disciplinary Committee) under section 35(1)(iii) of the PAO, agreed at \$5,000,000.
3. The Respondents have indicated that they do not intend to contest the quantum of the financial penalty proposed by the Complainant.

4. The Respondents have also confirmed that the costs order referred to at paragraph 2(3) above is agreed by the Complainant and the Respondents to be appropriate in the circumstances of the case.
5. In these circumstances, what remains to be considered by the Committee is whether the proposed orders are reasonable and appropriate in light of the circumstances of this case.

Discussion

6. The relevant factors for a Disciplinary Committee's consideration of its order for sanctions are found in the Guideline to Disciplinary Committee for Determining Disciplinary Orders (the "**Guideline**").
7. In considering the appropriate disciplinary orders to be imposed, the Disciplinary Committee will have in mind the objects of the Institute as set out in section 7 of the PAO. The sanctions should not only be proportionate to the nature of the failure and the harm or potential harm caused by the breach, but also with the aim to protect public interest, deter non-compliance with professional standards, maintain and promote public confidence in the profession and declare and uphold proper standards of conduct and performance: see sections 1.3 and 1.4 of the Guideline.
8. The Disciplinary Committee is recommended to take a three-stage approach under sections 4 – 7 of the Guideline in determining the appropriate disciplinary order.

- (1) To determine the seriousness of the offence, including reviewing the circumstances of the case and determining the seriousness of the breach.
 - (2) To determine the appropriate sanctions based on case severity before considering other factors. Different sanctions are suggested as starting points for consideration for the three different levels of severity, namely moderately serious, serious and very serious.
 - (3) The Disciplinary Committee is then to consider the impact of other factors (i.e. previous disciplinary records, aggravating and/or mitigating factors, and past similar cases) in finalising its disciplinary order.
9. We adopt this three-stage approach and consider the relevant factors as set out in the Guideline.
10. Stage 1: In respect of the seriousness of the offence, we agree with the Complainant that the offences in the present case are properly considered to fall within the “serious” category for the following reasons.
- (1) As mentioned in the Decision, the audit deficiencies related to major line items in the Financial Information and the 2009 Financial Statements, and they could have a material impact on the assessments of findings in the audits by the auditors in accordance with relevant professional standards.
 - (2) Secondly, the breaches were not isolated events but they involved non-compliance of multiple professional standards over 2 audits.

- (3) Moreover, given the IPO Engagement related to the listing of the Company's shares on the Main Board of the Hong Kong Stock Exchange, and the 2009 Audit was the first year audit of the Company after it became listed, substantial public interest was at stake and it was imperative that the Financial Information and the 2009 Financial Statements present a true and complete picture of the Company's financial position to the investing public.
- (4) The deficiencies in the Respondents' audit work in relation to a listed company could undermine public confidence in the standards of the profession and have a detrimental effect on the reputation of the profession. The sanction imposed should adequately reflect that breaches of professional standards will not be condoned, and the sanctions imposed should provide a deterrence against deficiencies in order to maintain and promote public confidence in the profession.
- (5) However, there is nothing in the conduct of the Respondents, and the audit evidence made available by the Respondents to the investigating team of AIB, which suggests that their breaches were intentional or reckless or otherwise for improper motive. The complaints do not cast doubt on the Respondents' integrity.
11. Stage 2: As we have taken the view that the offences in the present case fall into the "serious" category, under section 6 of the Guideline the starting point for sanctions includes a reprimand, financial penalty, cancellation of practising certificate (not to be reissued for up to 1 year), temporary removal from the register and/or payment of costs and incidentals.

12. Stage 3: We then consider other factors such as past disciplinary record, aggravating and/or mitigating factors and the sanctions imposed in past similar cases.
 - (1) KPMG has in its past disciplinary history one disciplinary order and one resolution by agreement. The former concerned KPMG's audit of a listed company and there were deficiencies and non-compliance of professional standards. Whilst there was no dishonesty, deliberate misconduct or concealment, the Committee in that case considered the breaches to be serious. Taking into account the respondents' early admission, KPMG was reprimanded, ordered to pay a penalty of \$400,000 and to pay costs jointly and severally. Separately, the resolution by agreement concerned KPMG's audits of a listed company and its subsidiaries for 3 financial years. KPMG and the other respondents were reprimanded and jointly fined \$35,000, with costs to the Institute and the FRC.
 - (2) R2 and R3 have clear disciplinary records.
 - (3) The Complainant acknowledges, and the Respondents agree, that there are a number of mitigating factors in favour of the Respondents:
 - (a) The Respondents had cooperated fully with the FRC and the AIB's investigation.
 - (b) The relevant audits took place more than 11 years ago and the Complainant is not aware of any other audit issues involving R2 and R3.
 - (c) R2 is in private practice and does not currently hold a practising certificate.

- (d) The complaints in these proceedings did not involve issues of professional competence, dishonesty, deliberate misconduct or concealment, nor the receipt of inappropriate benefits on the part of the Respondents.
 - (e) Although they fell short of the required standards, the Respondents had carried out a considerable amount of work in the IPO Engagement and the 2009 Audit.
- (4) The Complainant has cited two past disciplinary orders (being D-05-IC22Q and D-16-1181F) involving audits of listed companies but in those cases the respondents admitted liability at the outset. The respondents were reprimanded, fined in the range of \$100,000 to \$350,000 and ordered to pay costs.
- 13. After taking into account the seriousness of the breaches, the circumstances of this case as well as all the mitigating factors, we agree with the Complainant that the sanctions to be imposed should be confined to those suggested sanctions for “moderately serious” breaches as listed in section 6 of the Guidelines, i.e. reprimand, financial penalty and/or payment of costs and incidentals.
- 14. Moreover, whilst this Committee is not bound by the decision of a previous Committee, we note that there are similarities in terms of the nature of the complaints in the present case and that in the two precedents cited to us. Having considered the amount of financial penalties imposed in those cases, we consider the quantum of the Complainant’s proposed penalties reasonable and appropriate in the circumstances of this case.

15. As for costs, since the Complainant is successful in all of the complaints against KPMG and R2 in respect of the IPO Engagement and all the complaints against KPMG and R3 in respect of the 2009 Audit (except for those relating to operating expenses for logging activities), the Respondents have fairly agreed to pay, on a joint and several basis, the costs and expenses in relation to or incidental to the investigation reasonably incurred by the FRC and the costs and expenses of and incidental to the proceedings of the Complainant (including those of the Committee). The agreed sum of \$5,000,000 is in all respects reasonable in the light of the scale of investigation and the voluminous amount of documents involved.

Conclusion

16. The Committee makes the following order:
 - (1) the Respondents be reprimanded under section 35(1)(b) of the PAO;
 - (2) KPMG do pay a penalty of \$500,000 (for the first and third complaints), R2 do pay a penalty of \$300,000 (for the second complaint), and R3 do pay a penalty of \$200,000 (for the fourth complaint) under section 35(1)(c) of the PAO; and
 - (3) the Respondents do pay, on a joint and several basis, the costs and expenses in relation or incidental to the investigation reasonably incurred by the FRC under section 35(1)(d)(ii) of the PAO and the costs and expenses of and incidental to the proceedings of the Complainant (including the costs and expenses of the Disciplinary

Committee) under section 35(1)(iii) of the PAO, agreed at \$5,000,000.

DATED the 12th day of August 2021

Ms. LAU Shing Yan, Zabrina
Chairman

Mr. LAM Yin Shing, Donald
Member

Mr. CHAN Wai Tong, Christopher
Member

Mr. MUI Arthur
Member

Mr. TSAI Wing Chung, Philip
Member