

Proceedings No. : D-12-0711F

Complaint against : Mr. Choi Kwok Man, a certified public accountant (practising) (Membership No. A03798) (1st Respondent) and
K.M. Choi & Au Yeung Limited (Corporate Practice No. M043) (2nd Respondent)

Members : Mr. John Scott QC SC (Chairman)
Mr. Tse Lai Leung Jimmy MH
Mr. Wong Sai Hung Oscar
Mr. Knight Evans Carlyon John, CPA(Practising)

Date of Hearing : 6th September 2013

REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (“the Institute”) as the Complainant against Mr. Choi Kwok Man, a certified public accountant (practising) (Membership No. A03798) and K.M. Choi & Au Yeung Limited (Corporate Practice No. M043), under Section 34(1)(a)(vi) of the Professional Accountants Ordinance Cap. 50 (“PAO”).
2. The particulars of the complaint are as set out in a letter from the Complainant dated the 30th October 2012 (“the Complaint”) to the Council Hong Kong Institute of Certified Public Accountants.

3. The essence of the Complaint is that the Respondents failed or neglected to observe, maintain or otherwise apply professional standards pursuant to Section 34(1)(a)(vi) PAO in that:-
- (1) the determination of the fair value of the Share Options of Sing Lee Software (Group) Limited (“the Company”) in its accounts for the years 2007 to 2009 did not follow paragraph 17 of IFRS 2 and paragraph B4 of Appendix B to IFRS 2;
 - (2) there was non-compliance with paragraphs 3 and 17 of ISA 545 “Auditing Fair Value Measurements and Disclosures” as the 1st Respondent did not properly evaluate the fair value measurement of the Share Options and did not obtain sufficient or appropriate audit evidence to enable it to conclude that the fair value of the Share Options was measured in accordance with IFRS 2;
 - (3) there was non-compliance with paragraphs 11 and 13 of ISA700 “Independent Auditor’s Report on a Complete Set of General Purpose Financial Statements” in that the failure to comply with IFRS 2 would have had a significant impact on the relevant Financial Statements and the 1st Respondent should have expressed qualified opinions on the 2007 to 2009 Financial Statements; and
 - (4) that the 1st Respondent had failed to comply with Sections 130.1 and 130.2 of the Code of Ethics for Professional Accountants issued December 2005 (“COE”) because of the admission that it did not know of the existence of IFRS 2.

Facts and Supports of the Complaints

4. Note 25 of the relevant Financial Statements of the Company recorded that on the 9th October 2007 the Company granted 47,555,000 Share Options (“the Share Options”) to the Group’s employees at an exercise price of HK\$0.368 per share.
5. No professional valuations of the Share Options were carried out for the 2007 and 2009 Financial Statements. In fact the Reports of the Directors in those Annual Reports state that the Directors considered it inappropriate to value the Options.
6. In each of the 2007 and 2009 Financial Statements the Share Options were attributed with a nil value.
7. Subsequently, following the appointment of new auditors, the Company’s management was advised that this previous approach regarding the valuation of Share Options was not correct and the Company issued a letter dated 18th July 2011 stating that its then auditor considered that there should be a fair value in respect of the Share Options granted in previous years, including financial years 2007 to 2009 and that the fair value of the share based payment was recognised in its expenses. Accordingly, the 2010 Financial Statements included a restatement of the Share Options expenses for the years ended 31st December 2007 to 2009.
8. The Complainant places reliance upon correspondence from the 1st Respondent in which he admitted his lack of awareness of the existence and application of IFRS 2 to the 2007 to 2009 Financial Statements: see letters to the AIB from the 1st Respondent dated 4th August 2011 and 27th October 2011.

9. The Respondents were served with a copy of the Complainant's Case dated the 19th April 2013 and were notified of the Hearing which took place on the 6th September 2013 by registered post to their business addresses on a number of occasions. On the afternoon of the Hearing on 6th September 2013 a final attempt was made to contact the 1st Respondent by telephoning his mobile phone, which was not answered and the call went eventually to voice mail. Accordingly, the Tribunal proceeded to hear the Complaint in the absence of the Respondents.
10. Further, as a matter of procedure, one of the members of the Tribunal who was scheduled to attend on the 6th September 2013 was unavailable. The clerk to the Disciplinary Committee requested comments from the Parties as to whether or not the Disciplinary Committee could proceed in the absence of one member pursuant to Section 33B. The Complainant did not object and no comment was received from the Respondents. Accordingly, the Disciplinary Committee proceeded to determine the Complaint and proceed with handing down its Ruling on the sanctions to be applied.

The Merits of the Complaint

11. Having considered the Submissions made on behalf of the Complainant by Mr. Donald Leo, representative of the Complainant, we are satisfied that it has been proved that the Respondents have breached Section 34(1)(a)(vi) of PAO in that they failed and neglected to observe, maintain or otherwise apply a due professional standard, namely Section 130 of the COE.
12. Paragraph 130 of the COE expects Professional Accountants to "*maintain professional knowledge and skill at the level required to ensure that clients receive competent professional services*".

13. The Respondents' admitted ignorance of IFRS 2 shows that they failed to attain or maintain the requisite professional knowledge to conduct an audit of the Company's Financial Statements and in particular with regard to the Share Options.

Sanctions

14. Having considered the information before it, the Committee ORDERS that:-
 - (1) The name of the 1st Respondent be removed from the Register of Certified Public Accountants temporarily for eighteen months under Section 35(1)(a) of the PAO. The removal is to be effective on the 40th day from the date of this order;
 - (2) The 2nd Respondent be reprimanded under Section 35(1)(b) of the PAO;
 - (3) The Respondents are jointly and severally liable to pay the costs and expenses incidental to the proceedings of the Complainant in the sum of HK\$162,265.40 under Section 35(1)(iii) of the PAO.

Dated 10th day of October 2013