



Hong Kong Institute of Certified Public Accountants takes disciplinary action against a certified public accountant (practising) and a firm

(HONG KONG, 9 April 2018) On 8 September 2015, a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants found that Wong Tak Man, Stephen, a certified public accountant (practising) (membership number F02863) and RSM Hong Kong (formerly known as RSM Nelson Wheeler) (firm number 1140) (collectively "Respondents") failed or neglected to observe, maintain or otherwise apply a professional standard issued by the Institute.

The two Respondents were each ordered to pay a penalty of HK\$10,000 and jointly pay costs and expenses of the disciplinary proceedings of the Institute in the total sum of HK\$95,401.

In handing down sanctions, the Disciplinary Committee imposed a restriction on the Institute regarding the publication of the sanctions ordered, save with the Respondents' consent.

The Respondents refused their consent and challenged the disciplinary order.

In October 2015, the Respondents appealed the Disciplinary Committee's decision and the matter was dismissed by the Court of Appeal (CACV 233/2015) in July 2016. The Respondents sought leave to appeal to the Court of Final Appeal on grounds of Great General Public Importance. Leave to appeal to the Court of Final Appeal was granted and, after hearing the parties, the Court of Final Appeal (FACV 10/2017) dismissed the Respondents' appeal on 22 December 2017.

Since the handing down of the Disciplinary Committee's decision, the Respondents have been disputing the extent of the Disciplinary Committee's Order on the publication of sanctions and the publication of the Disciplinary Committee's decision.

Following clarification from the Disciplinary Committee, and the Institute's indication that it would proceed with the publication of the Disciplinary Committee decision in accordance with the Disciplinary Committee clarification, the Respondents agreed to the Institute publishing the full disciplinary decision and order.

On 28 October 2009, RSM Nelson Wheeler issued an unmodified auditor's report on the financial statements of Heng Tai Consumables Group Limited and its subsidiaries ("Group") for the year ended 30 June 2009. Wong was the engagement partner.

In November 2012, the Institute received a referral from the Financial Reporting Council ("FRC") regarding the Group's treatment of an available-for-sale ("AFS") financial asset, which had suffered significant decline in fair value. The FRC considered that Respondents' issuance of an unmodified auditor's report was inappropriate.

After considering the information available, the Institute lodged a complaint against the Respondents under section 34(1)(a)(vi) of the Professional Accountants Ordinance.

The Disciplinary Committee found that in the audit of the financial statements the Respondents failed to properly interpret Hong Kong Accounting Standard 39 Financial Instruments: Recognition and Measurement, which requires an entity to recognize an impairment loss in profit or loss for an AFS financial asset when objective evidence of impairment exists.

The full findings of the Disciplinary Committee are available at the Institute's website under the "Compliance" section at www.hkicpa.org.hk. Copies of the decisions of the Court of Appeal and the Court of Final Appeal are available on the Hong Kong judiciary website.

Disciplinary proceedings of the Institute are conducted in accordance with Part V of the ordinance by a five-member Disciplinary Committee. Three members of each committee, including a chairman, are non-accountants chosen from a panel appointed by the Chief Executive of the HKSAR, and the other two are CPAs.

Disciplinary hearings are held in public unless the Disciplinary Committee directs otherwise in the interest of justice. A hearing schedule is available at the Institute's website. A CPA who feels aggrieved by an order made by a Disciplinary Committee may appeal to the Court of Appeal, which may confirm, vary or reverse the order.

Disciplinary Committees have the power to sanction members, member practices and registered students. Sanctions include temporary or permanent removal from membership or cancellation of a practising certificate, a reprimand, a penalty of up to \$500,000, and payment of costs and expenses of the proceedings.

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About the Hong Kong Institute of Certified Public Accountants

The Hong Kong Institute of CPAs is the only body authorized by law to register and grant practising certificates to certified public accountants in Hong Kong. The Institute has more than 42,000 members and more than 18,000 registered students. Members of the Institute are entitled to the description *certified public accountant* and to the designation CPA.

The Hong Kong Institute of CPAs evolved from the Hong Kong Society of Accountants, which was established on 1 January 1973.

The Institute operates under the Professional Accountants Ordinance and works in the public interest. The Institute has wide-ranging responsibilities, including assuring the quality of entry into the profession through its postgraduate qualification programme and promulgating financial reporting, auditing and ethical standards in Hong Kong. The

Institute has responsibility for regulating and promoting efficient accounting practices in Hong Kong to safeguard its leadership as an international financial centre.

The Hong Kong Institute of CPAs is a member of the Global Accounting Alliance – an alliance of the world’s leading professional accountancy bodies, which was formed in 2005. The GAA promotes quality services, collaborates on important international issues and works with national regulators, governments and stakeholders.

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香港會計師公會對一名執業會計師及一間會計師事務所作出紀律處分

(香港，二零一八年四月九日) 香港會計師公會轄下一紀律委員會，於二零一五年九月八日裁定執業會計師王德文先生(會員編號：F02863)及中瑞岳華(香港)會計師事務所(事務所編號：1140)(統稱為「答辯人」)沒有或忽略遵守、維持或以其他方式應用公會頒佈的專業標準。

兩名答辯人須各自繳付罰款 10,000 港元並共同繳付公會紀律程序費用 95,401 港元。

在發出懲處時，紀律委員會限制公會在公佈有關懲處時須事先取得答辯人的同意。

答辯人拒絕同意並挑戰有關紀律命令。

答辯人於二零一五年十月就紀律委員會的裁決提出上訴，而上訴於二零一六年七月被上訴法庭駁回(CACV 233/2015)。答辯人以事宜涉及廣泛的公眾重要性為理由，尋求許可上訴至終審法院。答辯人獲許可上訴至終審法院，而終審法院經聆聽各方陳辭後，於二零一七年十二月二十二日駁回答辯人的上訴(FACV 10/2017)。

自紀律委員會發出裁決後，答辯人一直對紀律委員會公佈懲處命令及公佈紀律委員會裁決的程度提出異議。

經紀律委員會澄清，及公會表明會根據紀律委員會的澄清向外公佈紀律委員會的裁決後，答辯人同意公會公佈全部相關紀律裁決與命令。

中瑞岳華(香港)會計師事務所於二零零九年十月二十八日對亨泰消費品集團有限公司及其附屬公司(「該集團」)截至二零零九年六月三十日止年度財務報表，發出了無保留意見的核數師報告。王先生為審計項目合夥人。

二零一二年十一月，公會收到財務匯報局(「財匯局」)的轉介，事關該集團對一項可供出售金融資產的公允價值大幅減少的會計處理方法。財匯局認為答辯人發出無保留意見的核數師報告並不恰當。

公會經考慮所得的資料後，根據《專業會計師條例》第 34(1)(a)(vi)條對答辯人作出投訴。

紀律委員會裁定答辯人在審計有關財務報表時，未能適當地詮釋香港會計準則第 39 號「*Financial Instruments: Recognition and Measurement*」。該準則規定有客觀證據顯示可供出售金融資產出現減值時，實體須在損益表中確認相關減值虧損。

紀律委員會所有相關裁決，可於公會網頁(<http://www.hkicpa.org.hk>)內「Compliance」部分查閱。有關上訴法庭及終審法院的裁決，可於香港司法機構的網頁查閱。

公會的紀律程序是根據《專業會計師條例》第 V 部，由五位成員組成的紀律委員會執行。每個紀律委員會的大多數成員，即包括主席在內的三名成員，是選自從業外人士組成的紀律小組，該紀律小組的成員是由香港特別行政區行政長官委任；另外兩名成員由專業會計師出任。

除非負責的紀律委員會因公平理由認為不恰當，否則紀律聆訊一般以公開形式進行。紀律聆訊的時間表可於公會網頁查閱。如當事人不服紀律委員會的裁判，可向上訴法庭提出上訴，上訴法庭可確定、修改或推翻紀律委員會的裁判。

紀律委員會有權向公會會員、執業會計師事務所及註冊學生作出處分。紀律處分範圍包括有限期或永久地將違規者從會計師名冊中除名或吊銷執業證書、對其作出譴責、下令罰款不多於 500,000 港元，以及支付紀律程序的費用。

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關於香港會計師公會

香港會計師公會是香港唯一獲法例授權負責專業會計師註冊兼頒授執業證書的組織，會員人數超過四萬二千，註冊學生人數逾一萬八千。公會會員可採用「會計師」稱銜（英文為 certified public accountant，簡稱 CPA）。

公會（Hong Kong Institute of Certified Public Accountants）於一九七三年一月一日成立，當時的英文名稱為 Hong Kong Society of Accountants。

公會根據《專業會計師條例》履行職責，以公眾利益為依歸。其職能廣泛，包括開辦專業資格課程（Qualification Programme）以確保會計師的入職質素，以及頒布香港的財務報告、審計及專業操守準則。此外，公會亦負責在香港監管和推動優良而有效的會計實務，以鞏固香港作為國際金融中心的領導地位。

香港會計師公會是全球會計聯盟（Global Accounting Alliance，GAA）的成員之一。全球會計聯盟於二零零五年成立，聯合了全球頂尖的專業會計團體，推動優質服務，並積極與各地監管機構、政府及關連人士就國際重要議題共同合作。

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IN THE MATTER OF

A Complaint made under section 34(1)(a) and section 34(1A) of the Professional Accountants Ordinance (Cap. 50) (“PAO”) and referred to the Disciplinary Committee under section 33(3) of the PAO

BETWEEN

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

AND

Wong Tak Man Stephen (F02863) FIRST RESPONDENT

AND

RSM Nelson Wheeler (Firm No: 1140) SECOND RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants (“the Institute”).

Members: Mr. LEE Ka Sze, Carmelo (Chairman)
 Mr. DONOWHO Simon Christopher
 Ms. WOO Lee Wah Cecilia
 Mr. MAR Selwyn

Date of Hearing: 1 June 2015

ORDER

At the hearing on 1 June 2015, the Disciplinary Committee found the following complaint against the First Respondent and the Second Respondent proved:

The Respondents were in breach of Section 34(1)(a)(vi) of the Professional Accountants Ordinance in that they failed or neglected to observe, maintain or otherwise apply professional standards, namely, HKAS 39 by failing to ensure that the decline in value of the shares in China Zenith Chemical Group Limited be

reflected in profit and loss in the audited consolidated financial statements of Heng Tai Consumables Group Limited for the year ended 30 June 2009.

IT IS ORDERED that:-

1. each of the Respondent pay a penalty of HK\$10,000 to the Institute; and
2. the Respondents do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$66,800, that of the Clerk in the sum of HK\$21,000 and that of disbursements in the sum of HK\$7,601. The said costs and expenses shall be borne equally between the Respondents.

IT IS FURTHER DIRECTED that no publicity of the aforesaid sanction should be made unless with the consent of the Respondents.

Dated the 8th day of September 2015

IN THE MATTER OF

A Complaint made under section 34(1)(a) and section 34(1A) of the Professional Accountants Ordinance (Cap. 50) ("PAO") and referred to the Disciplinary Committee under section 33(3) of the PAO

BETWEEN

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

AND

Wong Tak Man Stephen (F02863) FIRST RESPONDENT

AND

RSM Nelson Wheeler (Firm No: 1140) SECOND RESPONDENT

Members: Mr. LEE Ka Sze, Carmelo (Chairman)
 Mr. DONOWHO Simon Christopher
 Ms. WOO Lee Wah Cecilia
 Mr. MAR Selwyn

Date of Hearing: 1 June 2015

REASONS FOR DECISION

1. The gist of the matter is whether the requirements of HKAS 39 had been duly complied with when the audited consolidated financial statements of Heng Tai Consumables Group Limited ("Heng Tai") for the year ended 30 June 2009 ("Financial Statements") were being prepared and the Second Respondent (with the First Respondent being the engagement partner) issued an unqualified opinion on the Financial Statements.
2. The Respondents' challenges to the complaint are mainly based on three grounds. The Disciplinary Committee (the "Committee") will deal with them one by one in the same order set out in the oral submission of the Respondents' counsels on 1 June 2015.

3. Ground 1 : Wrong charge being laid against the Respondents

3.1 The Committee originally found the Respondents' argument very attractive. However, the Committee has adopted a "substance over form" approach and concluded that whether the Respondents would be in breach of HKAS 39 or HKSA 700.11 or 700.13, the indisputable fact is that the breach, if any, had originated from the improper interpretation of HKAS 39 by the Respondents when issuing an unqualified opinion on the Financial Statements. As the auditors of Heng Tai, the Respondents should have ensured proper interpretation of HKAS 39. Any failure on the part of the Respondents in this regard is sufficient for the Committee to conclude that HKAS 39 had been breached.

4. Ground 2 : The Respondents' interpretation of HKAS 39 not unreasonable

4.1 The Committee finds the wordings of HKAS 39 clear. On reading the relevant paragraphs in HKAS 39, the Committee is of the view that, as far as the present case is concerned, the only conclusion one would arrive at is that the decline in fair value of the shares in China Zenith Chemical Group Limited ("China Zenith") below their costs at the material time was significant and prolonged, which would warrant an impairment charge in the Financial Statements.

4.2 Paragraph 61 is very clear : "..... A significant or prolonged decline in the fair value of an investment in an equity instrument below its cost is also objective evidence of impairment".

4.3 The Respondents' submission that paragraph 61 not to be read in isolation has its attraction. However, upon further thoughts, the Committee finds that the intention of HKAS 39 (particularly paragraph 61) cannot be as submitted by the Respondents.

4.4 The Committee finds that for listed/quoted equity instruments such as shares quoted in an active stock market like The Stock Exchange of Hong Kong Limited, a significant or prolonged decline in the quoted share price of a listed company will no doubt be the most objective evidence of impairment.

4.5 The Respondents had not submitted that the decline in share price of China Zenith had not been significant or prolonged. Rather, the Respondents took the view that the evidence of a loss event (such as a decline in the share price of China Zenith) did not by itself justify making impairment loss and one would need to move on to the second stage to evaluate the financial impact, if any, brought about by the loss event on the recovery of the cost of the financial asset. The Committee is of the view that this may be true for equity instruments (such as shares) not listed in an active stock market, in which case one would need to rely on paragraph 59 of HKAS 39 to see if there was any loss event to support the existence of objective evidence of impairment. An available-for-sale financial asset may be listed or unlisted. If it belongs to the former, objective evidence of impairment will be readily available by looking at the price quoted in an active stock market. The Respondents further elaborated on "long-term" investment and "temporary" fluctuations, which will not assist the

Respondents' case since paragraph 61 also covers this by using the phrase "prolonged" or "significant".

4.6 Indeed, there might have been diversity of practices over HKAS 39. The Respondents have kindly provided this Committee with instances before July 2009 and after July 2009 where certain companies listed in Hong Kong might not have complied with HKAS 39 and queried why auditors of such companies had not been pursued by the Institute. The Committee took the view that all these are mitigating factors on sanctions but will not exonerate the Respondents from liability.

5. Ground 3 : Published Share Price of China Zenith not reliable for the purpose of impairment assessment

5.1 The Respondents lastly submitted that the share price of China Zenith as at 30 June 2009 was unreliable because of thinness of the market and equate "thinly traded" as "unreliable". The Committee does not agree. In fact, there is no evidence to show that the share price was either unreliable or the market was "thin". A review of the share price data and trading volumes show that:

- (i) the share price of China Zenith shares remained relatively stable within the band of approximately HK\$0.15 and HK\$0.25 per share;
- (ii) for most of the time during the post balance sheet event period, the share prices kept below HK\$0.2; and
- (iii) there was no evidence of an inactive market as there had been a continued trading in China Zenith shares.

5.2 The Committee took the view that the market price of China Zenith shares clearly reflected the fair value that a willing buyer and a willing seller in an arm's length transaction would agree upon (cf. AG 71 of Appendix A). In fact, the quoted market price was adopted to adjust the carrying amount of Heng Tai's investment in the shares of China Zenith apparently in purported compliance with paragraph 55(b) of HKAS 39 (cf. note 24 of the Notes to the Financial Statements contained in Heng Tai's 2009 Annual Report).

6. Conclusion

6.1 The Committee concludes that the complaint against the Respondents substantiated.

6.2 However, the Committee is of the view that there are strong mitigating factors in this case:

- (a) this is not a case where the Respondents had been oblivious of the existence of HKAS 39. In fact, the Respondents' had duly carried out its evaluation of Heng Tai's impairment assessment by having :
 - (i) duly noted the necessity of performing the impairment review;

- (ii) duly set out the approach in working progress;
 - (iii) duly noticed the decline in the value of China Zenith shares; and
 - (iv) duly assessed the reliability of the published share price by performing tests and performed alternative bases of valuation.
- (b) The Respondents had committed an error of judgment and came to the wrong conclusion when performing audit on the Financial Statements. The Respondents' such wrong conclusion had largely been contributed by the lack of authoritative interpretation and diversity in practices as regards HKAS 39. The Institute could have been more proactive at the material time by issuing guidelines and practice notes. If the Institute was not yet ready for the implementation of HKAS 39 back then, it should have postponed the adoption of HKAS 39.
- (c) The Committee is also mindful that the decline in fair value of the China Zenith shares, though not recognized in profit and loss, had been reflected as change in fair value of available-for-sale financial assets on page 37 of the 2009 Annual Report of Heng Tai. The basis for not making an impairment was also stated in paragraph 4(j) of the notes to the Financial Statements on page 58 of the 2009 Annual Report. The decline in value was not realized losses. Indeed, in the overall context of Heng Tai's financial position as at 30 June 2009 and consolidated profit for the year ended 30 June 2009 the impact of such decline in value could not be said to be substantial. The Committee takes the view that it is unlikely that any investors would have suffered a loss as a result of this non-complying accounting treatment.
- (d) In the circumstances, the Committee takes a very lenient approach on the matter and has decided to mete out only a penalty of HK\$20,000 (i.e. HK\$10,000 on each Respondent) as sanction. The Committee would further direct that no publicity of the sanction should be made.

6.3 As regards costs, since costs should follow the event, the costs of the Clerk and that of the Complainant should be paid by the Respondents as follows:

- (a) the rates of charge per hour for the Institute's staff as submitted are reasonable;
- (b) the costs of the Clerk in the sum of HK\$21,000 should be allowed, which is arrived at after taking into account that only 7 hours (instead 16 hours as submitted) were incurred for the substantive hearing;
- (c) the costs of the Complainant in the sum of HK\$66,800 should be allowed, which is arrived at after taking into account that only 7 hours (instead 16 hours as submitted) were incurred for the substantive hearing; and
- (d) the photocopying and printing charges in the sum of HK\$7,061 are allowed in full.

- 6.4 The Committee does not consider it appropriate to allow the costs and expenses of Financial Reporting Council in this particular case.
- 6.5. The Committee therefore orders that:-
- (a) each of the Respondents pay a penalty of HK\$10,000 to the Institute; and
 - (b) the Respondents do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$66,800, that of the Clerk in the sum of HK\$21,000 and that of disbursements in the sum of HK\$7,601. The said costs and expenses shall be borne equally between the Respondents.
- 6.6 The Committee further direct that no publicity of the aforesaid sanction should be made unless with the consent of the Respondents.

Dated the 8th day of September 2015