

IN THE MATTER OF a Complaint made
under section 34(1)(a) of the Professional
Accountants Ordinance, Cap.50
("Ordinance")

BETWEEN

REGISTRAR OF THE HONG KONG
INSTITUTE OF CERTIFIED PUBLIC
ACCOUNTANTS

Complainant

AND

HENG KWOO SENG

Respondent

DECISION ON SANCTIONS AND DIRECTIONS ON COSTS

Sanctions

1. The Respondent faced three disciplinary complaints, as follows:-

(1) First Complaint

Complaint has been laid pursuant to Section 34(1)(e) of the Professional Accountants Ordinance ("PAO") in force at the material time that, Mr. Heng Kwoo-seng, being currently a certified public accountant and at all

material times a professional accountant, in the period from 1993 to 1995, was guilty of professional misconduct.

Particulars

Acting in a manner which was not consistent with the good reputation of the accountancy profession:

- (i) On 23 May 1995 Mr. Heng Kwoo-seng made several cash withdrawals from his company's bank account and on the same day made a cash payment to Mr. Peter Norman Elliott, an employee of Standard Bank London Limited, in the combined sum of HK\$1,397,000.
- (ii) The payment was made by Mr. Heng Kwoo-seng handing to Mr. Peter Norman Elliott in person in Mr. Heng Kwoo-seng's office a brown envelope containing US\$100,000, GBP10,000 and HK\$500,000.
- (iii) The payment was made to Mr. Peter Norman Elliott as his share of commission received from Shenzhen Yiwen Industrial Company Limited in connection with the making of a loan or the granting of a credit facility of \$20,000,000 United States currency to Shenzhen Yiwen Industrial Company Limited arranged by Standard Bank London Limited.
- (iv) On his own evidence in DCCC488/2002 Mr. Heng Kwoo-seng made the payment without having any regard or giving any thought to the legality of the payment or the legitimacy of Mr. Peter Norman Elliott receiving the payment.

(2) Second Complaint (Alternative to the First Complaint)

Complaint has been laid pursuant to Section 34(1)(db) of the PAO in force at the material time that, Mr. Heng Kwoo-seng, being currently a certified public accountant and at all material times a professional accountant, in the period from 1993 to 1995, failed or neglected to observe, maintain or otherwise apply a professional standard, namely, the Fundamental

Principles set out in Statement 1.200, “Professional Ethics – Explanatory Foreword”, of the Members’ Handbook of the Hong Kong Society of Accountancy (as then in force).

(Further particulars of the background leading to the Complaints are set out in certain documents referred to as Appendix A, Appendix B and Appendix C and will not be repeated here).

(3) Third Complaint

Complaint has been laid pursuant to Section 34(1)(db) of the PAO in force at the material time that, Mr. Heng Kwo-seng, being currently a certified public accountant and at all material times a professional accountant, between 1 June 1993 and 22 September 1994 (both dates inclusive), failed or neglected to observe, maintain or otherwise apply any professional standards, namely, Paragraph 2 of Statement 1.203, “Professional Ethics – Independence”, of the Members’ Handbook of the Hong Kong Society of Accountants (as then in force).

Particulars

Mr. Heng Kwo-seng, being currently a certified public accountant and at all material times a professional accountant and the sole proprietor of K. S. Heng & Co., contravened:

- (a) Statement 1.303, “General Guidance – Restriction on Appointments as Secretaries and Directors of Audit Clients”, of the Members’ Handbook of the Hong Kong Society of Accountants (as then in force) by allowing Goodvest Limited (a limited liability company affiliated with K. S. Heng & Co.) to serve as a director of Asia Pacific Leasing Limited (“APL”), which was at all material times audited by K. S. Heng & Co.; and
- (b) Paragraph 2 of Statement 1.203, “Professional Ethics – Independence”, of the Members’ Handbook of the Hong Kong Society of Accountants (as then in force), in that the relationship in

(a) above made it impossible for Mr. Heng Kwoo-seng to be seen to be free from the interests which might detract from objectivity.

2. By letter dated 21 January 2010 from Mr. Heng's solicitors (K. Y. Woo & Co.) to the Clerk to the Disciplinary Committee, Mr. Heng admitted the Second Complaint (Alternative to the First Complaint) and the Third Complaint.
3. By letter dated 25 January 2010 from the Complainant's solicitors (JSM), the Complainant confirmed that, in light of Mr. Heng's admissions as aforesaid, the Complainant would not proceed with the First Complaint.
4. On 8 February 2010, JSM on behalf of the Complainant submitted a Statement of Agreed Facts duly signed on behalf of both the Complainant and Mr. Heng to form the factual basis of the Disciplinary Committee's decision on sanctions. A copy of the Statement of Agreed Facts is annexed herewith for ease of reference.
5. By letter dated 22 February 2010, JSM made written submissions on sanctions and costs, and enclosed therewith a "Complainant's Statement of Costs" for consideration by the Disciplinary Committee.
6. By letter dated 5 March 2010, Mr. Heng through his solicitors made submissions on sanctions and costs.
7. Further submissions were received from JSM on 9 March 2010 and from Mr. Heng's solicitors on 17 March 2010.
8. In respect of the Second Complaint, the agreed facts indicate that Mr. Heng assisted or facilitated Mr. Elliott to receive a number of bribes, contrary to s.9(2) of the Prevention of Bribery Ordinance. It is no part of the Complainant's case that Mr. Heng was aware that the money paid by him and received by Mr. Elliott was unauthorised or was an illegal advantage, although it may be noted that Mr. Heng gave evidence under immunity in the prosecution of Mr. Elliott. We do not comment on whether the Complainant ought to have advanced the case that Mr.

Heng was aware of the illegal nature of the payment and will proceed on the assumption that Mr. Heng was not. Nevertheless, given Mr. Heng's experience, we consider that Mr. Heng was guilty of a high degree of negligence in the matter, including the failure to make due inquiries of Mr. Elliott's employer on whether he was permitted to accept the payment.

9. In any event, Mr. Heng admits that he failed or neglected to observe, maintain or otherwise apply the Fundamental Principles in Statement 1.200 (Professional Ethics - Explanatory Forward), in particular paragraph 4 thereof, which states that: "A member should follow the ethical guidance of the Society and in circumstances not provided for by that guidance should conduct himself in a manner consistent with the good reputation of the profession and the Society".
10. In the absence of any allegation of dishonesty on the part of Mr. Heng, we do not think it would be appropriate to impose any sanction of removal for any period. Nevertheless, we consider that a reprimand and a substantial monetary penalty would be required to reflect the gravity of the matter.
11. As regards the amount of the penalty, we have taken into account the seriousness of the charge and the fact that Mr. Heng derived personal benefits of over \$3.6m out of the Yiwen transaction. We have also taken into the mitigating factors put forward on behalf of Mr. Heng in K. Y. Woo & Co.'s letters of 5 March 2010 and 17 March 2010, including Mr. Heng's admission and the lapse of time between the relevant events and the disciplinary proceedings. In all the circumstances, we decide that a penalty of HK\$400,000 is appropriate.
12. In respect of the Third Complaint, the allegation is that Mr. Heng (through K. S. Heng & Co.) acted as auditor of APL and (through Goodvest Limited) as director of that company. The particular professional standard which Mr. Heng admits that he failed or neglected to observe, maintain or otherwise apply is Paragraph 2 of Statement 1.203 (Professional Ethics - Independence), which states that: "A member in public practice should be, and be seen to be, free in each professional

assignment he undertakes of any interest which might detract from objectivity. The fact that this is self-evident in the exercise of the reporting function must not obscure its relevance in respect of other professional work".

13. Again, it seems to us that a reprimand and a monetary penalty would be appropriate for this complaint. In determining the amount of the penalty, we have taken into account Mr. Heng's admission and the fact that APL was a dormant company at the material time, and so it is unlikely that any third party would have suffered any prejudice, as well as the mitigation put forward in K. Y. Woo & Co.'s letter of 5 March 2010. We decide that a penalty of HK\$150,000 is appropriate.
14. In summary, the disciplinary awards are:-
 - (1) in respect of the Second Complaint, a reprimand and a penalty of HK\$400,000; and
 - (2) in respect of the Third Complaint, a reprimand and a penalty of HK\$150,000.

Costs

15. On the question of costs, the Disciplinary Committee has considered the "Complainant's Statement of Costs" and K. Y. Woo & Co.'s representations. The total costs claimed by the Complainant amount to about \$540,000, of which about \$128,000 relates to the costs of the Clerk to the Disciplinary Committee and the balance relates to the costs of legal advisors to the Complainant. The Disciplinary Committee has, on 30 April 2010, received an updated Statement of Costs from the Complainants, but Mr Heng has not had any chance to comment on the updated statement. Before we are in a position to make our costs order, we require further information to be provided by the Complainant, in particular:-
 - (1) a more detailed breakdown of the costs incurred, with a brief description of the work involved and the time spent by each fee earner;

- (2) the charging rate of each fee earner;
- (3) what costs were incurred for preparing the new complaints which were put before the Disciplinary Committee on 18.1.2010;
- (4) whether there was any duplication of work by the two solicitors firm (Woo Kwan Lee & Lo and JSM), and if so to what extent;
- (5) what was the "Third Complaint" which apparently was dropped on 3 September 2008 (see top of page 2 of K Y Woo & Co's letter of 5 March 2010), and whether any costs incurred in that "Third Complaint" are included in the Complainant's Statement of Costs.

16. The above information should be provided by the Complainant within 14 days from the date hereof, and Mr. Heng may, if so advised, make any further representations that he wishes to make on the issue of costs within 14 days thereafter.

Dated this 2nd day of ^{July} ~~May~~, 2010.

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BETWEEN

REGISTRAR OF THE HONG KONG
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Complainant

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Respondent

DECISION ON COSTS

1. The present Decision on Costs should be read together with our previous Decision on Sanctions and Direction on Costs. In paragraph 16 of the previous decision, the Complainant was directed to provide the following further information:-
- (1) a more detailed breakdown of the costs incurred, with a brief description of the work involved and the time spent by each fee earner;
 - (2) the charging rate of each fee earner;
 - (3) what costs were incurred for preparing the new complaints which were put before the Disciplinary Committee on 18.1.2010;

- (4) whether there was any duplication of work by the two solicitors firm (Woo Kwan Lee & Lo and JSM), and if so to what extent;
 - (5) what was the "Third Complaint" which apparently was dropped on 3 September 2008 (see top of page 2 of K Y Woo & Co's letter of 5 March 2010), and whether any costs incurred in that "Third Complaint" are included in the Complainant's Statement of Costs.
2. It was also directed that the above information should be provided by the Complainant within 14 days, and Mr. Heng might, if so advised, make any further representations that he wished to make on the issue of costs within 14 days thereafter.
3. The Complainant has since provided the information as directed by a letter dated 29 July 2010 with a number of documents attached thereto. Mr Heng has not made any further representations.
4. In the Updated Complainant's Statement of Costs dated 30 April 2010, the following items of costs (with breakdowns) are sought against Mr Heng:-
 - (1) Costs of the Complainant (including counsel's fee and disbursements) – HK\$433,170.20
 - (2) Costs of the Clerk to Disciplinary Committee – HK\$139,501.70.
5. We have now seen the bills rendered by the legal advisors to the Complainant, as well as the fee notes of counsel instructed by Woo Kwan Lee & Lo at an earlier stage of these proceedings. We have also been provided with information relating to the time spent by the fee earners and by the Clerk, as well as their charging rates.
6. In relation to the costs of the Complainant, we have taken into account the following matters:-

- (1) the fact that costs were incurred in the preparation of new or amended complaints put before the Disciplinary Committee on 18 January 2010 – to the extent of HK\$8,700;
- (2) there was duplication of work by the two solicitors firm (woo Kwan Lee & Lo and JSM) - to the extent of HK\$17,400;
- (3) there were some costs incurred in a complaint (i.e. the complaint concerning unauthorised use of another company's logo in the notepaper of a company owned by Mr Heng) which has been dropped – to the extent of HK\$4,500.

7. We have also taken into account the previous representations made on behalf of Mr Heng, including K Y Woo & Co's letters of 5 March 2010 and 17 March 2010 respectively, on the matter of costs and do not proposed to set them out here. We wish, however, to make it clear that the Disciplinary Committee considers that the directions hearing on 18 January 2010 was a necessary one which enabled these proceedings to be put back on the right track and the costs incurred by the Complainant in relation to that hearing are, *prima facie*, recoverable from Mr Heng as part of the costs of these proceedings.

8. In assessing the costs of the Complainant payable by Mr Heng, the Disciplinary considers that they should be assessed on a "party-to-party" basis instead of "indemnity" basis. The Disciplinary Committee also considers that it is appropriate to make a lump sum assessment. In all the circumstances, the Disciplinary Committee decides that Mr Heng should be ordered to pay the sum of HK\$300,000 by way of costs to the Complainant.

9. In relation to the costs of the Clerk to the Disciplinary Committee, the Disciplinary Committee applies the same principles (i.e. assessment on party-to-party basis and lump sum assessment). The Disciplinary Committee decides that Mr Heng should be ordered to pay the sum of HK\$120,000 by way of costs to the Clerk to the Disciplinary Committee. This is without prejudice to the right of the

Clerk to the Disciplinary Committee to recover any costs (not recovered from Mr Heng) from the party who engaged his services in this matter.

Dated this 28th day of October, 2010.
