

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Chan Hing Wang
Considered on:	Tuesday, 04 May 2021
Chair:	Mrs Valerie Patterson
Legal Adviser:	Mr Andrew Granville Stafford
Outcome	Consent order approved

INTRODUCTION

1. This matter has been referred to the Consent Orders Chair of ACCA ('the Chair') pursuant to Regulation 8(8) of the Complaints and Disciplinary Regulations ('CDR') for the Chair to determine on the basis of the evidence before them whether to approve the draft Consent Order.
2. The Chair had before them a bundle of 502 pages including a Consent Order Draft Agreement, a costs schedule and a notice of hearing.

CONSTITUTION OF THE COMMITTEE

3. Under CDR 8(8), a consent order is made by a Chair of the Disciplinary Committee in the absence of the parties and without a hearing. The Chair is assisted by a Legal Adviser. For avoidance of doubt the Legal Adviser is an independent barrister or solicitor. The role of a Legal Adviser, as set out in

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ACCA's Regulations, is advisory only. The Legal Adviser is not a voting member of the Committee as this would be a departure from their function. This is the determination of the Chair alone.

CONSENT ORDER DRAFT AGREEMENT

4. The Consent Order Draft Agreement was signed by Mr Chan on 30 March 2021 and by a representative of ACCA on 12 April 2021. It reads as follows.

'The Association of Chartered Certified Accountants (ACCA) and Mr Chan Hing Wang (together "the Parties"), agree as follows:

1. Chan Hing Wang, an ACCA member and the Money Laundering Reporting Officer and a principal of Herkes Courtney Wong Limited ("the Firm") (at the relevant time) admits the following:

Allegation 1

From 26 June 2017 to 05 October 2020, Chan Hing Wang failed on behalf of the Firm to comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 in that he:

- (a) Did not put in place adequate steps to identify and assess the risks of money laundering and terrorist financing contrary to Regulation 18;
- (b) Did not establish and maintain policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in any risk assessment undertaken by the relevant person contrary to Regulation 19;
- (c) Did not take appropriate measures to ensure that relevant employees were given regular training in how to recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing contrary to Regulation 24; and
- (d) Retained records indefinitely without deleting personal data contrary to Regulation 40.

Allegation 2

From 26 June 2017 to 29 August 2019, Chan Hing Wang failed on behalf of the Firm to comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 in that he:

- (a) Did not conduct ongoing monitoring of business relationships contrary to Regulation 28;
- (b) Did not obtain proof of clients' addresses or sufficiently verify the identity of directors and ultimate beneficial owners of limited company clients contrary to Regulation 28; and
- (c) Did not implement appropriate risk-management systems and procedures to determine whether a customer is a politically exposed person ("PEP") or a family member or a known close associate of a PEP and manage the enhanced risks arising from business relationships contrary to Regulation 35.

Allegation 3

By reason of his conduct as set out in Allegations 1 and 2, Chan Hing Wang failed to comply with Section B2 of ACCA's Code of Ethics and Conduct (Anti Money Laundering) (as applicable from 2017 to 2020).

Allegation 4

By reason of his conduct in respect of all the matters set out at Allegations 1 to 3, Chan Hing Wang is guilty of misconduct pursuant to byelaw 8(a)(1).

2. That Mr Chan shall:

- (a) Be severely reprimanded;
- (b) Pay a fine to ACCA of £7,000; and
- (c) Pay costs to ACCA in the sum of £2,650.'

5. The relevant background and facts are set out in an appendix to the agreement which reads as follows:

'Relevant Facts, Failings and/or Breaches

3. The Investigations Officer has conducted their investigation into the allegations against Mr Chan in accordance with Regulation 8(1)(a) of ACCA's Complaints and Disciplinary Regulations and is satisfied that:

- (a) they have conducted the appropriate level of investigation as evidenced by the enclosed evidence bundle (pages 9 to 502), and

determined that there is a case to answer against Mr Chan and there is a real prospect of a reasonable tribunal finding the allegations proved; and

(b) the proposed allegations would be unlikely to result in exclusion from membership.

4. The relevant facts, failings and/or breaches have been agreed between the parties and are set out in the detailed allegations above together with the proposed sanction and costs.

5. A summary of key facts is set out below:

5.1. On 13 September 1979, Mr Chan became a Member of ACCA (page 122).

5.2. On 13 September 1984, Mr Chan became a Fellow of ACCA (page 122).

5.3. On 27 February 1987, the Firm was incorporated (page 381).

5.4. As at 15 January 1991, Mr Chan was a director of the Firm (page 380).

5.5. On 29 August 2014, Mr Chan was issued with an ACCA Practicing Certificate, having previously held an ACCA Practicing Certificate with Audit Qualification since 01 January 1998 (page 123).

5.6. On 26 June 2017, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the Money Laundering Regulations") came into force (pages 73 to 86).

5.7. Mr Chan was the Money Laundering Reporting Officer ("the MLRO") of the Firm (page 14; pages 87 to 88).

5.8. On 29 August 2019, ACCA's Anti-Money Laundering team ("the AML Team") undertook a monitoring visit to the Firm (pages 110 to 121). The monitoring visit revealed evidence of poor compliance with AML controls, including:

5.8.1. Firm-wide risk assessment - the Firm had not established adequate steps to identify and assess the risks of money laundering and terrorist financing (Regulation 18 of the Money Laundering

Regulations);

5.8.2. AML policies and procedures - the Firm had not established and maintained policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in any risk assessment undertaken (Regulation 19 of the Money Laundering Regulations);

5.8.3. Training - the Firm had not taken appropriate measures to ensure that relevant employees were given regular training in how to recognise and deal with transactions and other activities which may have been related to money laundering or terrorist financing (Regulation 24 of the Money Laundering Regulations);

5.8.4. Record keeping - the Firm had retained records indefinitely without deleting personal data (Regulation 40 of the Money Laundering Regulations);

5.8.5. Ongoing monitoring - the Firm had not conducted ongoing monitoring of business relationships (Regulation 28 of the Money Laundering Regulations);

5.8.6. Customer due diligence - the Firm had not obtained proof of address of clients' addresses or sufficiently verified the identity of directors and ultimate beneficial owners of limited company clients (Regulation 28 of the Money Laundering Regulations); and

5.8.7. High-risk clients – the Firm had not implemented appropriate risk management systems and procedures to determine whether a customer was a politically-exposed person (“PEP”) or a family member or a known close associate of a PEP and had not managed the enhanced risks arising from business relationships (Regulation 35 of the Money Laundering Regulations).

5.9. On 31 January 2020, Mr Chan wrote to ACCA to express his intention to retire before 25 June 2020 (pages 309 to 310).

5.10. In respect of the 05 October 2020 end date contained in Allegation 1:

5.10.1. On 05 October 2020, Mr Chan resigned as a director of the Firm (page 380); and

5.10.2. On 23 October 2020, Mr Chan ceased holding an ACCA practising certificate (page 382).

5.11. In respect of the end date of 29 August 2019 contained in Allegation 2, the Firm's compliance beyond 29 August 2019 (i.e. the date of the AML Team's monitoring visit to the Firm) could only be assessed upon a further review of the Firm's files and after the date of 10 September 2019 (the date for remedial action), following which Mr Chan had indicated his intention to cease practising (page 310).

7. As a result of Mr Chan's confirmation that the Firm had ceased trading (page 351), his resignation as a director of the Firm (page 380) and his relinquishing of his ACCA practising certificate (page 382), Mr Chan has, in effect, rectified the breaches contained in Allegations 1 and 2 and no longer falls within the remit of ACCA's AML supervisory function.
8. The relevant sections of the Money Laundering Regulations are contained at pages 73 to 86.
9. Mr Chan's conduct in respect of Allegations 1 and 2 was also contrary to Section B2 (Anti-Money Laundering) of ACCA's Code of Ethics and Conduct which required that Mr Chan:
 - 8.1. Familiarise himself with the law that applied to him and ensure that he worked within the law (paragraph 5);
 - 8.2. Ensure that relevant staff in their firm received regular training to ensure that client identification procedures were carried out in respect of new clients and that the staff were competent to identify money laundering or terrorist financing activity where they came across it (paragraph 7);
 - 8.3. Verify the identity of clients by reliable and independent means and retain copies of the same on file (paragraph 9);
 - 8.4. Regularly review the history of a relationship to satisfy himself that the work or transactions being carried out were consistent with the client's usual activities (paragraph 16); and
 - 8.5. Pay special attention to transactions in which clients were involved that appeared to have no apparent economic or visible lawful

purpose (paragraph 19).

SANCTION

10. The appropriate sanction is severe reprimand and a fine of £7,000.
11. In considering this to be the most appropriate sanction, ACCA's Guidance for Disciplinary Sanctions (Guidance) has been considered and particularly the key principles. One of the key principles is that of the public interest, which includes the following:
 - Protection of members of the public;
 - Maintenance of public confidence in the profession and in ACCA; and
 - Declaring and upholding proper standards of conduct and performance.
12. Another key principle is that of proportionality, that is, balancing the member's own interests against the public interest. Further the aggravating and mitigating features of the case have been considered.
13. The aggravating factors are considered to be:
 - Compliance with the Money Laundering Regulations is a legal requirement and mandatory;
 - Mr Chan was the MLRO of the Firm;
 - The potential risks arising from a failure to implement adequate AML policies and procedures in the Firm;
 - The extent of the Firm's non-compliance is significant;
 - The length of time the Money Laundering Regulations came into effect; and
 - Mr Chan's conduct fell below the standards expected of a qualified ACCA member and brought discredit upon himself, ACCA and the accountancy profession.
14. In deciding that a severe reprimand is the most suitable sanction paragraphs C4.1 to C4.5 of ACCA's Guidance have been considered and the following mitigating factors have been noted:

- Mr Chan is no longer in breach of the Money Laundering Regulations;
 - Mr Chan has fully co-operated with the investigation;
 - Mr Chan has ultimately admitted his conduct;
 - There is no evidence to suggest that Mr Chan's conduct was dishonest; and
 - There is no continuing risk to the public as Mr Chan has ceased undertaking public practice.
15. ACCA has considered the other available sanctions and is of the view that they are not appropriate. ACCA considers that a severe reprimand proportionately reflects Mr Chan's conduct and the public policy considerations which ACCA must consider in deciding on the appropriate sanction. This is a public interest sanction due to the misconduct bringing discredit to ACCA and the profession; and it conveys a message of the importance of fundamental standards of professional conduct.

DECISION

16. The powers available to the Chair are to:
- a. Approve the draft Consent Order, in which case the findings on the allegations and the orders contained in it become formal findings and orders (CDR 8(11) and 8(14));
 - b. Reject the draft Consent Order, which they may only do if they are of the view that the admitted breaches would more likely than not result in exclusion from membership (CDR 8(12));
 - c. Recommend amendments to the draft Consent Order, if they are satisfied it is appropriate to deal with the complaint by way of consent but wish the terms of the draft order to be amended (CDR 8(13)).
17. The Chair carefully considered the draft agreement, the agreed background and the supporting documents. The Chair was satisfied that Mr Wang had fully admitted the allegations against him and that the proposed sanction was appropriate and proportionate. The Chair was therefore satisfied that it was appropriate to make a Consent Order in the terms agreed between the parties.

ORDER

18. The Chair made the following order.
- i. The draft Consent Order is approved.
 - ii. Allegations 1, 2, 3 and 4 are proved by admission.
 - iii. Mr Wang is severely reprimanded and ordered to pay a fine of £7,000.
 - iv. Mr Wang is ordered to pay costs to ACCA in the sum of £2,650.
19. Under CDR 8(17) there is no right of appeal against this order. Therefore, this order comes into effect immediately.

Mrs Valerie Patterson
Chair
04 May 2021