

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Kong Muk Yin FCCA
Considered on:	Thursday, 14 July 2022
Location:	Held remotely by video conference
Chair:	Mrs Carolyn Tetlow (Chair)
Legal Adviser:	Mr Andrew Granville Stafford
Outcome	Consent Order approved

INTRODUCTION

1. This matter has been referred to a Chair of the Disciplinary Committee of ACCA ('the Chair') pursuant to Regulation 8(8) of the Complaints and Disciplinary Regulations ('CDR') to determine on the basis of the evidence before them whether to approve the draft Consent Order. 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.
2. The Chair had before them a bundle of 681 pages which included a Consent Order Draft Agreement, a service bundle and costs schedules.

CONSENT ORDER DRAFT AGREEMENT

3. The Consent Order Draft Agreement was signed by Mr Kong on 31 May 2022 and by a representative of ACCA on 26 May 2022. Mr Kong admitted the

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following allegation:

Pursuant to ACCA Byelaw 8(a)(vi), Mr Kong Muk Yin FCCA is liable to disciplinary action by virtue of regulatory action taken against him by the Hong Kong Securities and Futures Commission and the order made by the Market Misconduct Tribunal ('MMT') of Hong Kong on 06 May 2021.

4. The parties agreed that Mr Kong shall be reprimanded and shall pay costs to ACCA in the sum of £350 (GBP) / \$3437.81 (HKD).
5. A copy of the Consent Order Draft Agreement and the Relevant Facts, Failings and/or Breaches as agreed by the parties is attached to this decision as **Appendix 1** below.

DECISION

6. 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)).
7. The Chair was satisfied it was appropriate to make a Consent Order in the terms agreed between the parties.
8. Mr Kong had fully admitted the allegation. The Chair was satisfied that a sufficiently full and thorough investigation had been carried out and that there clearly was, if the case proceeded to a hearing, a real prospect that the allegation would be found proved. The Chair was accordingly satisfied, on the basis of the evidence before them, that Mr Kong's admission had been properly made.

9. The Chair noted the contents of paragraphs 14 and 15 of the Appendix which set out the agreed mitigating and aggravating factors. The Chair noted that one of the mitigating factors is said to be that the disciplinary action taken against Mr Kong by the Market Misconduct Tribunal of Hong Kong (MMT) following an investigation by the Hong Kong Securities and Futures Commission relate to a single incident. The Chair considered that this should be weighed against the fact that misconduct persisted for a number of months.
10. However, a further and important mitigating factor, which was not referred to in the agreed statement of facts, was that it had been accepted during the Hong Kong proceedings that there was no evidence of personal gain by Mr Kong resulting from his breach of the disclosure requirements. Of significance, in the Chair's view, was that there had been no finding that Mr Kong acted either dishonestly or in deliberate disregard of his professional obligations.
11. The Chair noted in particular that the misconduct had been dealt with by way of a suspension, fine and retraining imposed by the MMT. Mr Kong had complied with those orders and had, therefore, remediated his misconduct.
12. The Chair accepted that, in all the circumstances, a reprimand was an appropriate and proportionate sanction. It sufficiently marked the public interest in protecting the public, maintaining confidence in the profession and declaring and upholding proper standards.
13. The Chair did not consider that exclusion was a likely sanction if the matter proceeded to a hearing before the Disciplinary Committee.
14. Therefore, the Chair approved the draft Consent Order.

ORDER

15. The Chair made the following order:
 - i. The draft Consent Order is approved.
 - ii. Allegation 1 is proved by admission.
 - iii. Mr Kong is reprimanded.
 - iv. Mr Kong is ordered to pay costs to ACCA in the sum of £350 (HKD \$3437.81).

16. Under CDR 8(17) there is no right of appeal against this order. Therefore, this order comes into effect immediately.

Ms Carolyn Tetlow
Chair
14 July 2022

ACCA case ref: UF7621576

Mr KONG Muk Yin FCCA
(ACCA ID: 1879724)

-and-

THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

Appendix 1

Description: A copy of the Consent Order Draft Agreement and the Relevant Facts, Failings and/or Breaches as agreed by the Mr Kong and ACCA

ACCA case ref: UF7621576

Mr KONG Muk Yin FCCA
(ACCA ID: 1879724)

-and-

THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

Referral to Consent Orders Chair



Consent Order: Draft Agreement

The Association of Chartered Certified Accountants (ACCA) and ACCA fellow, Mr KONG Muk Yin (Mr Kong), agree as follows:

1. Mr Kong admits to the following:

Pursuant to ACCA Byelaw 8(a)(vi), Mr Kong Muk Yin FCCA is liable to disciplinary action by virtue of regulatory action taken against him by the Hong Kong Securities and Futures Commission and the order made by the Market Misconduct Tribunal of Hong Kong on 06 May 2021.

2. That Mr Kong shall be **reprimanded** and shall pay costs to ACCA in the sum of £350 (GBP) / \$3437.81 (HKD).

<p>Signed:  Date: 31 May 2022 Mr KONG Muk Yin FCCA</p>	<p>Signed:  Date: 26 May 2022 (For and on behalf of the Association)</p>
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3. If the Consent Orders Chair is satisfied it is appropriate to deal with the complaint by way of Consent Order and the signed draft Consent Order is approved, it constitutes a formal finding and order. The Consent Orders Chair has the power to recommend amendments to the signed draft Consent Order and to subsequently approve any amended order agreed by the Parties.

Publicity

4. All findings and orders of the Consent Orders Chair shall be published naming the relevant person, as soon as practicable, and in such manner as ACCA thinks fit.

Relevant Facts, Failings and/or Breaches

5. The Investigating Officer has conducted their investigation into the allegations against Mr Kong in accordance with Regulation 8(1)(a) of the Complaints and Disciplinary Regulations (CDR) (2019) and is satisfied that:
 - a. they have conducted the appropriate level of investigation as evidenced by the enclosed evidence bundle, and determined that there is a case to answer against Mr Kong 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.
6. 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.
7. A summary of key facts is set out below:
 - a. On 28 October 2021, Mr Kong contacted ACCA and notified ACCA he entered into an Agreed Proposed Order with the Market Misconduct Tribunal of Hong Kong (MMT) following an investigation by the Hong Kong Securities and Futures Commission (SFC).
 - b. Mr Kong supplied his account of the matter (pages **19** to **23**) and supporting documents (pages **24** to **669**). ACCA treated this as a self-referral from Mr Kong.
 - c. The SFC investigation found Mr Kong in his capacity as Company A's (China Medical & HealthCare Group Limited) executive director breached disclosure requirement pursuant 307G(2)(a) of Securities and Future Ordinance, Cap. 571 of Hong Kong (pages **86** to **92**).
 - d. Mr Kong admitted to the breached and agreed to the following sanctions:

- i) Suspended from acting as director of any listed company for six months from 06 May 2021;
 - ii) Pay a regulatory fine of \$800,000 HKD; and
 - iii) Undergo a retraining programme approved by the SFC.
8. As part of his self-referral and subsequent response to ACCA, Mr Kong confirmed the suspension had lapsed (05 November 2021), he paid the fine and he completed the training agreed as part of the MMT Agreed Proposed Order.
9. Mr Kong also provided assurance that following the SFC investigation Company A has put measures in place to reduce the risk of repetition.
10. Mr Kong also demonstrated insight into his failings, in that he submitted that the remedial training he underwent gave him a better understanding of disclosure requirements and he will be more vigilant in respect of disclosure of inside information in the future.

Sanction

11. The appropriate sanction is a **reprimand**
12. 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.

Another key principle is that of proportionality, that is, balancing the Mr Kong'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 as follows:

- The conduct which led to Mr Kong being the subject of action by the MMT fell below the standards expected of a qualified ACCA member. As such his conduct has brought discredit upon himself, ACCA and the accountancy profession; and
 - Mr Kong was suspended from holding a directorship for six months.
14. In deciding that a reprimand is the most suitable sanction paragraphs C3.1 to C3.5 of ACCA's Guidance have been considered and the following **mitigating factors** have been noted:
- The failings identified by the SFC investigation have been addressed and are unlikely to be repeated. Measures have been put in place by Company A and Mr Kong to reduce the risk of repetition;
 - Mr Kong has shown insight by entering into an Agreed Proposed Order with MMT;
 - Mr Kong self-referred to ACCA and engaged with the investigation which is to his credit;
 - The SFC investigation has not found evidence suggesting Mr Kong's failing was dishonest or in deliberate disregard of his professional obligations;
 - The consequences of Mr Kong's conduct have not caused material distress, inconvenience or loss;
 - There does not appear to be any continuing risk to the public; and
 - The disciplinary action taken by the SFC and MMT relates to a single incident.
15. ACCA has considered the other available sanctions and is of the view that they are not appropriate. A **reprimand** proportionately reflects Mr Kong's conduct and the public policy considerations which ACCA must consider in deciding on the appropriate sanction.