

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Kevin Lau

Considered on: Tuesday, 24 January 2023

Location: ACCA, The Adelphi, 1-11 John Adam Street, London,
WC2N 6AU via Microsoft Teams

Chair: Mrs Helen Carter-Shaw

Legal Adviser: Mrs Sobia Hussain

Outcome: Consent Order Granted

DOCUMENTS BEFORE THE CHAIR

1. The Chair received a bundle of papers, numbered pages 1-125 including a signed draft Consent Order.

ALLEGATIONS

2. Mr Kevin Lau Association of Certified Chartered Accountants (ACCA) member admits the following:

Pursuant to bye-law 8(a)(vi), Mr Kevin Lau is liable to disciplinary action by virtue of the action taken against him by the Hong Kong Securities and Futures Commission via the Market Misconduct Tribunal on 06 May 2021.

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

BACKGROUND

3. Mr Lau has been a member of ACCA since 1984.
4. As part of his annual membership renewal, on 22 January 2022, Mr Lau notified ACCA of the proceedings by the Hong Kong Securities and Futures Commission (SFC) and the Market Misconduct Tribunal of Hong Kong (MMT).
5. The SFC is a regulator of the Hong Kong securities and futures market and takes enforcement and disciplinary action via the MMT.
6. On 6 May 2021, Mr Lau was disciplined by the MMT following a referral by the SFC into breaches of the requirements of the corporate disclosure regime. The MMT sanctioned Mr Lau, along with others, in his capacity as an independent non-executive director of a company for failing to disclose inside information as soon as reasonably practicable following proceedings brought by the SFC.
7. The MMT ordered that Mr Lau (and others) pay SFC's investigation and legal costs and those of the MMT and that he be fined and attend an *"SFC-approved training programme on the corporate disclosure regime, directors' duties and corporate governance"*.

MR LAU'S SUBMISSIONS

8. Mr Lau has responded to the Allegation in its entirety. Mr Lau's responses were received on 21 October 2022 and also 22 December 2022. Mr Lau contends that the company in question is Company A, formerly known as Company B. At the time of the case, one of the principal activities of Company A was holding and trading of investments. Its investment portfolio included more than 30 different companies, the detailed composition of which was not disclosed to the public as it was not a disclosure requirement either under Hong Kong accounting standards or Hong Kong Listing Rules.

9. It was noted that Company A had made a substantial gain in its investment portfolio in March 2014, and Mr Lau said *“I did raise in a regular quarterly board meeting held on 26 June 2014 that whether a positive profit alert announcement (the UPPA Announcement) should be issued. After thorough discussion amongst the board members, the consensus reached at the meeting was that it was not the right time to issue an announcement because:*

(i) The practice of the Company when issuing PPA Announcement or profit warning announcement has always been to include an estimated profit figure or estimated percentage increase in profit as the Stock Exchange generally requires this information to be disclosed in the PPA Announcement. Thus, the PPA Announcement could only be issued when the accounts for the year ended 30 June 2014 were substantially finalized.

(ii) The Hong Kong stock market has always been very volatile. As the Company was holding more than 30 different stocks at that time and the substantial gain involved only one stock in the investment portfolio, namely, Company C, formerly known as Company D, its impact on the value of the portfolio, and hence the impact on the profit figure of Company C, may be limited and/or may fluctuate quite significantly from time to time.”

10. Based on the above, the board of directors unanimously agreed that the PPA Announcement would only be issued when Company C’s profit figures for the year ended 30 April 2014 have substantially been finalized so as to provide meaningful information to the trading public. As Company C had to consider the provision for impairment on Company E, a significant associated company of Company C, which was only finalized in September 2014, the accounts for the year ended 30 June 2014 were only substantially finalized at that time. The PPA Announcement was thereafter promptly issued on 10 September 2014.

11. In response to whether Mr Lau had complied with the fundamental principle of the professional behaviour as set out in Section 110 of the Code of Ethics for Professional Accountants, he states the following:

Integrity - there is definitely no personal gain on my part (and I truly believe on the part of all other directors) in the case as we all had not traded in the Company's shares within the period April 2014 to September 2014.

Objectivity-though the decision to issue the PPA Announcement was unanimously agreed upon, I have come up with the decision after careful consideration without any influence from others.

Professional Competence and Due Care -the fact that I have raised the issue on whether or not to issue the PPA Announcement in the board meeting held in June 2014, and the decision of issuing one after the Group's results for the year ended 30 June 2014 have substantially been finalized after careful consideration of all facts, clearly demonstrated that I have exercised due care when performing my duty as independent non-executive director. Please bear in mind that at the time of the case the inside information rules were relatively new and there were very few, if any, precedent cases to follow.

Confidentiality-I have all along complied with all confidentiality rules and there has all along been no suggestion otherwise.

Professional behaviour- please refer to my comments to (iii) above.

CHAIR'S DECISION

12. Under Regulation 8(8) of the Complaints and Disciplinary Regulations 2014, the Chair must determine whether, based on the evidence before them, the draft Consent Order should be approved or rejected. The Chair had regard to the Consent Orders Guidance and the Consent Orders Guidance FAQs.

13. The Chair has power to approve the Consent Order and noted that under Regulation 8(12) they shall only reject the signed Consent Order if they are of the view that the admitted breaches would, more likely than not, result in exclusion from membership before a Disciplinary Committee.
14. The Chair considered the seriousness of the breaches as set out and the public interest, which includes the protection of the public, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and performance. The Chair balanced this against Mr Lau's interests. The Chair noted the list of aggravating and mitigating factors advanced at paragraphs 11 and 12 of ACCA's summary in the bundle. Mr Lau had brought discredit to himself, ACCA and the accountancy profession by being disciplined by another body. The Chair also took account of the fact that Mr Lau had brought the matter to ACCA's attention. He had fully and promptly cooperated with the investigation. He had not benefitted personally from the matters for which he was disciplined and had paid the fine and attended the required training. He had been a member of ACCA since 1984 and had no previous disciplinary findings against him. He had shown insight and apologised for his actions.
15. The Chair had regard to ACCA's Guidance for Disciplinary Sanctions. They were satisfied that there had been early and genuine acceptance of the misconduct and that the risk to the public and profession from Mr Lau continuing as a member was low.
16. For the reasons set out above, the Chair was satisfied that the admitted breaches would be unlikely to result in exclusion from membership before a Disciplinary Committee, and therefore there was no basis for them to reject the Consent Order under Regulation 8(12). The Chair noted the proposed Consent Order and was satisfied that a Reprimand was an appropriate and proportionate disposal of this case.

ORDER

17. The Chair, pursuant to their powers under Regulation 8, made an Order in terms of the draft Consent Order and approved the draft Order made by ACCA signed by Mr Lau on 05 December 2022 and signed by ACCA on 25 November 2022, namely that Mr Lau be reprimanded and pay ACCA's costs of £350.00

Mrs Helen Carter-Shaw
Chair
24 January 2023