

Order No. DT09/2020

**The Hong Kong Institute of Chartered Secretaries (“HKICS”)
and
China Division of The Chartered Governance Institute (“CGI”)
formerly The Institute of Chartered Secretaries and Administrators**

**Decision of the Disciplinary Tribunal (“DT”) Concerning the Case Against
Mr Yiu Ka Lun Ken (the “Respondent”)**

Date of DT hearing and Decision: 12 November 2020

Date of Reasons for Decisions: 7 December 2020

Pursuant to CGI Byelaw 23.1 and HKICS Article 25.2, the Investigation Group (“IG”) of both CGI China Division and HKICS by its report dated 2 June 2020 recommended to the DT for consideration of the Respondent having been convicted in the Eastern Magistrates’ Court of two charges of insider dealing, contrary to sections 291(1)(a), 291(8) and 303(1) of the Securities and Futures Ordinance, Cap 571 (the “Charges”) in Court case nos. ESS 34210/2019 and ESS 34211/2019 (the “Criminal Cases”).

The Respondent provided documents and explanations to the IG.

After the notice to this DT hearing was issued to the Respondent on 20 August 2020, no reply was received from the Respondent within the reply deadline of 20 September 2020 and on 1 November 2020, the Respondent informed by email the Secretariat that he would attend the DT hearing in person scheduled for 12 November 2020.

The DT met on 14 July 2020 and 12 November 2020 to consider the present case. An oral hearing by the DT was conducted on 12 November 2020 when the Respondent attended in person.

At the DT hearing, the Respondent confirmed that he was the subject person in the Criminal Cases and had served the respective custodial sentences in the Criminal Cases in year 2019.

Having reviewed the court decisions and the explanations given by the Respondent to the IG and the DT, the DT has made the following finding of facts and decisions:

Background and key facts

1. The Respondent committed the insider dealing criminal offence while he was a student of HKICS in year 2013 for which he was subsequently charged and convicted in year 2019 when he had already become a member of the Institute. In 2013, he was an officer in charge of regulatory affairs of Hong Kong Television Network Limited (HKTV), a listed company. He was not a relevant person required by his employer to seek its prior approval before any dealing in its shares. The Charges stated that while he was a connected person to HKTV in possession of insider information relating to a transfer of licence by HKTV, he bought 100,000 shares and 1,000 shares in HKTV on two occasions which he subsequently sold making profits of HK\$163,810.

2. On 5 December 2016, the Respondent started his employment with HKICS Secretariat as a Senior Manager of Professional Development Section and was promoted to Chief Operating Officer and Director of Professional Development Section on 1 January 2019.
3. On 24 October, 5 November and 7 November 2019, the Securities and Futures Commission (SFC) released its enforcement news press releases regarding the Criminal Cases and the subsequent convictions.
4. On 24 October 2019, the Respondent resigned from his employment with HKICS.
5. On 5 November 2019, the Respondent pleaded guilty to and was convicted of the Charges (the "Convictions").

The Convictions

6. On 7 November 2019, the Respondent was sentenced :-
 - (i) to serve 2 months and 2 weeks' imprisonment and 2 weeks' imprisonment respectively and concurrently;
 - (ii) fined HK\$150,000 and HK\$15,000 respectively and consecutively; and
 - (iii) to bear the investigation costs of the SFC in the sum of HK\$147,560.

Findings of breach

7. The DT considered that the term "fit and proper" contained in the CGI Byelaw 6 and HKICS Article 6 was directly related to the character and standing of integrity, honesty and competence. Members and students of the Institute are required to discharge their duties to a high degree of integrity.
8. The DT considered that the criminal court conviction was clearly within the ambit of the fit and proper considerations of the Respondent as a member of the Institute, a Chartered Secretary and a governance professional; and the matter considered at the DT was whether the Respondent was still considered to be a fit and proper person to continue to be a member of the Institute, a Chartered Secretary and a governance professional.
9. The DT considered that integrity is the quality of being honest and having strong moral principles; and act in a way which conformed to the relevant laws of the respective jurisdiction and pay regard that the contravention to such may have a bearing.
10. The DT considered that the Respondent was convicted of a crime involving dishonesty, deliberate action, and a breach of trust; and was clearly stated and regarded as fraud on the public. This conduct was sufficient to substantiate the IG charges against the Respondent and to further warrant serious DT penalties to be imposed.
11. The DT considered that high moral standard is paramount to members and students of the Institute and that the good character and standing, being fit and proper was expected to be of a lifetime duration.
12. The DT considered that the news of the criminal court conviction was available in the public domain and being of a permanent nature.

Other circumstances

13. The DT considered that when the Respondent committed insider dealing, he had been in the technical job position as a senior regulatory affairs manager focusing on the acquisition of mobile television licence. During that time, the Respondent was a student of the Institute and might not have good knowledge about securities laws and corporate governance like members of the Institute.
14. The DT considered that the Respondent admitted this grievous mistake of his life and was remorseful, and he also bore the full responsibility of such.
15. The DT did not accept the explanation by the Respondent that he had only used the public information instead of any insider information before he made the securities deals being the subject matter of the Charges as he had pleaded guilty to the Charges.

The decision of the Disciplinary Tribunal

Having reviewed the Criminal Cases and the explanations given by the Respondent, the DT has found and decided the following:

16. The DT considered that the Respondent having the Convictions was in contravention to CGI Charter and Byelaws and HKICS Articles, and also HKICS Code of Professional Conduct.
17. Under all circumstances, members and students of the Chartered Secretarial profession shall observe the highest standards of professional conduct and ethical behavior in all their work and activities.
18. The DT considered the Respondent's breaches involved serious lapses of integrity, and his conduct fell seriously below the standard of integrity, probity and honesty expected of a member or student of the Institute.
19. The DT considered the fact that the Respondent being convicted of a crime involving dishonesty with such news available in the public domain, thereby bringing the Institute and the profession into disrepute and in breach of the core principle of integrity of the code of professional conduct and ethics.
20. The DT had found that the case against the Respondent proved and he had been in breach of:
 - (i) CGI Byelaw 23.8(b) and HKICS Article 25.1(b) that he had been convicted of a criminal offence which had brought or may bring discredit on the Institute or the profession;
 - (ii) CGI Byelaws 23.8(c) and 23.8(f), and HKICS Article 25.1(d) that he had contravened the Institute's byelaws or Charter or regulations and failed to uphold the code of professional conduct and ethics; and
 - (iii) CGI Byelaw 23.8(d) and HKICS Article 25.1(c) that he had behaved, by doing something or not doing something, in a way considered by the DT to bring the Institute or the profession into disrepute.

Sanctions

21. Having taken into account of the circumstances of the case and the mitigating factors, pursuant to CGI Byelaw 24.1 and HKICS Article 27 the DT **ORDERED** that

- (a) the Respondent's membership shall be suspended for 2 years commencing after the expiry of the time limit for him to appeal this decision or if he appeals, the disposal of his appeal by the Appeal Tribunal;
 - (b) the Respondent be publicly reprimanded, and this decision shall be published publicly via the Institute's website and/or other official channels, with such news be included in the Institute's journal; and
 - (c) the Respondent shall pay the Institute's costs of HK\$10,000.
22. Pursuant to CGI Byelaw 25 and HKICS Article 28, the Respondent shall be entitled to appeal against the decision or any part of it by submitting, in writing, a request that the matter should be considered by the Appeal Tribunal, specifying in the request the grounds to be relied on in support of the appeal. The notice of intention to appeal must be received by HKICS within 28 days of his having been advised of the decision of DT and may be given to the person by whom the notice of the decision was given or to the Secretary of HKICS or any person authorised to receive such notice. If the notice of intention to appeal is given by telephone or other electronic method, it must be confirmed in writing within 14 days.

Dated 7 December 2020

Chairman, Disciplinary Tribunal