

DT Case No. 2021-03(M)
Decision No. DT 07/2021

**DISCIPLINARY TRIBUNAL
OF THE HONG KONG CHARTERED GOVERNANCE INSTITUTE
AND CHINA DIVISION OF THE CHARTERED GOVERNANCE INSTITUTE**

**DECISION
relating to a complaint against
Mr Liu Yiu Keung Stephen ACG HKACG (membership no. 0778633)**

Date of Hearing: 17 December 2021

Date of Decision: 7 February 2022

The Hong Kong Chartered Governance Institute
China Division of The Chartered Governance Institute
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1. In this Decision, The Hong Kong Chartered Governance Institute is referred to as the 'Institute'. The Institute is, and represents, the China Division of The Chartered Governance Institute ('CGI') under this Decision.

A. Background

2. On 21 December 2017, the Institute received a letter from the Official Receiver's Office ('ORO') drawing the Institute's attention to the removal of Mr Liu Yiu Keung Stephen (the 'Respondent') as one of the joint and several liquidators of Luen Tat Watch Band Manufacturer Limited ('Luen Tat') on 27 November 2017 by Mr Justice To, DJ. This was under the Court of First Instance ('CFI') decision of *Allied Ever Holdings Limited v Li Shu Chung, Li Joseph See Sun and Luen Tat Watch Band Manufacturer Limited* (HCCW 497/2009) (the 'CFI case'). The Respondent is an Associate Member of the Institute.
3. The then Chief Executive of the Institute's Secretariat determined that the ORO's letter gave rise to disciplinary concerns against the Respondent and that the disciplinary process of the Institute should be invoked. Accordingly, on 28 December 2017, the letter from the ORO was sent by the Institute's Secretariat to the Investigation Group ('IG') of the Institute and CGI. The IG is formed under Article 23.1 and CGI Byelaw 21.1(a) IG for investigating complaints and reporting on related matters.
4. On 11 January 2018, the Respondent appealed against the CFI case to the Court of Appeal ('CA') under case CACV 11/2018 ('CA case').
5. In March 2018, the IG met and determined to issue a letter of inquiry to the Respondent. The Respondent replied in May 2018, citing among other matters, the appeal of the CFI case under the CA case. In June 2018, the IG determined to hold the investigation of the potential disciplinary concerns against the Respondent in abeyance pending exhaustion of the appellate procedures for the CFI case.
6. On 27 April 2021, after over three years, the CA handed down its judgment ('CA Judgment') under the CA Case. The Hon Madam Justice Kwan, V-P, the Hon Mr Justice Cheung, JA and the Hon Mr Justice Au, JA affirmed the exercise of Mr Justice To, DJ's discretion under the CFI Decision.

B. Investigation by the IG

7. In May 2021, following exhaustion of the appellate procedures of the CFI case, with the CA Judgment and the Respondent deciding not to further appeal to the Court of Final Appeal, the IG resumed its disciplinary investigation.

C. IG Charges laid to the DT

8. On 18 August 2021, the IG prepared a report (the 'IG Report') under the Institute Article 25.2 and CGI Byelaw 23.1, which contained details of its investigation, the supporting material it considered relevant, and the grounds for bringing charges against the Respondent. The IG concluded that there were *prima facie* breaches of the Code, as well as potential breaches of the Institute Articles and CGI Byelaws by the Respondent.
9. Under the IG Report, which was provided to the Respondent, the IG asked this Disciplinary Tribunal ('DT') of the Institute and CGI formed under Article 23.2 and CGI Byelaw 21.1(b) to determine whether the Respondent :

Breach of Codes, Rules & Regulations

- (a) **CGI Byelaw 23.8(c)** - had failed to uphold the code of professional conduct and ethics;
- (b) **CGI Byelaw 23.8(f)** - had broken any of the CGI's bye-laws or Charter or Regulations;
- (c) **Institute Article 25.1(d)** - had acted in breach of the Articles of Association of the Institute or any rules, regulations, codes of practice or conduct, directions or instructions made or established by or under the authority of the Council;

The disrepute of the Institute or Profession

- (d) **CGI Byelaw 23.8(d)** - had behaved, by doing something or not doing something, in a way considered by the DT to bring the CGI or the profession into disrepute, and
- (e) **Institute Article 25.1(c)** - had conducted himself whether by act or default in a manner that might or was likely to be discreditable to the Institute or the profession.

D. Before the disciplinary hearing

10. On 16 September 2021, the Respondent, through Messrs Davis Polk & Wardwell ('DPW'), his solicitors, wrote to the DT and sought *inter alia* that the disciplinary proceedings be stayed until completion of a related case, namely, a civil case by Luen Tat, namely, **Luen Tat Watch Band Manufacturer Limited V Liu Yiu Keung & David Yen Ching Wai (HCA 1397/2018)** ('HCA case') where substantial damages and other remedies were being sought against the Respondent in respect of his work as liquidator of Luen Tat.

E. The Disciplinary Hearing

11. At the DT's disciplinary hearing on 17 December 2021, at 6:00 pm, at the Institute's Office, the Respondent attended the hearing, accompanied by his legal representatives, Mr Jose Maurellet, Senior Counsel ('SC') and Ms Phoebe Ko of DPW.
12. Mr Maurellet SC submitted that:
 - (a) The removal of the Respondent as liquidator is in the context of him being an officer of the Court in a fiduciary position. The standards applicable for the removal of a fiduciary should be different from the DT's consideration of potential disciplinary breaches by the Respondent;
 - (b) The liquidation appointment lasted for 7 years, involved numerous Court's proceedings and judgments, and related family confrontations. Unfortunately, the Respondent found himself caught in the family disputes;
 - (c) The CFI's findings were based on written affirmations and affidavits and not a full trial with the benefit of cross-examination of witnesses. In contrast, the HCA case will be under a full trial and the findings may contain relevant information for the DT to assess the current disciplinary case;

- (d) The Respondent's removal as a liquidator, with harsh comments from the Court, was already a heavy punishment to his reputation, and there was no further sanction imposed by the Court;
 - (e) The Respondent had been severely punished by the indemnity costs order and legal expenses;
 - (f) There were no judicial findings that the Respondent was involved in any fraud, dishonesty or integrity related matters; and
 - (g) The Respondent has been an Institute Member for 35 years, with a significant number of appointments in receiverships, liquidations and restructurings. His reputation was highly recognised and has proven professional and public service throughout his 35-year career. This was evidenced by a reference letter from a former Legislative Council member dated 1 November 2021.
13. The Respondent added that he acted with integrity and was bound by his employer's Code of Conduct. The Institute's charges laid against him would not only damage his reputation but also affect the hard-earned reputation of his employer, the firm which he had served for his entire career of 35 years. This was his main reason to defend the case and attend the disciplinary hearing.

The tax case

14. The DT, acknowledged, at the disciplinary hearing that there was a family dispute, but that it was primarily concerned, at this stage, with only one major issue, namely, the opening up of a settled tax case with the IRD which effectively turned a solvent liquidation into an insolvent one. At the DT hearing, the DT cited the findings of the CA case and asked for an explanation by the Respondent.
15. The Respondent explained that he believed that under the HCA case he will have the opportunity to explain this matter to the court, including through cross-examination of witnesses and discovery of the underlying working papers.
16. The DT made it clear that there were other potential disciplinary concerns, but it is the opening up of a settled tax case that gave rise to the immediate disciplinary concern, while other matters could potentially await the determinations under the HCA case.

Mitigation factors

17. The Respondent, during the DT hearing, has provided the following mitigating factors in case the DT is minded to impose disciplinary sanctions. First, he exercised good faith in that he had already waived his fees after August 2014 at around HK\$2 million. Second, he suffered a heart attack in 2011 during his appointment as liquidator of Luen Tat. Third, this was his one single error under his receivership, liquidation and restructuring appointments throughout his entire 35-year career but he did nothing to disrepute the Institute. Fourth, he had already retired and was no longer practising but still attended this hearing. This was because he cared much about his membership and the Institute's reputation in having been an Institute Member for 35 years. He regarded himself as part of the Institute. Lastly, he apologized for causing any trouble for the Institute.

F. DT's Assessment

18. The situation is complex. The decisions of the CFI case contained a number of criticisms that the DT members believed had merit based on the evidence provided. Also, the appellate procedures for the CFI case have been exhausted. The DT members understand the desire for the Respondent to explain his position under the HCA case which may provide grounds to consider mitigation for the disciplinary actions against him.
19. At the same time, the findings on the tax case under the CFI case, as affirmed by the CA Judgment, cannot be ignored by the DT. This is because irrespective of the eventual findings under the HCA case, the DT finds that there is a present breach of the Institute's Articles and Code of Professional Ethics and Conduct and CGI's Byelaws. The Institute's members are qualified to be appointed as provisional trustees of the bankrupt and as qualified professionals to handle insolvency work under the Bankruptcy

(Amendment) Ordinance. From the Respondent's biography, his main qualification is that of being a member of the Institute and CGI in taking up insolvency-related appointments.

20. Therefore, the failures of the Respondent in relation to the tax issue in the determination of the DT amounts to failure under the Institute's Code of Professional Ethics and Conduct in the following respects: to exercise due care and diligence in performing his duties and responsibilities; in maintaining good governance, management and efficient administration in his professional capacity as a Chartered Secretary; to be at all times cognisant of his responsibilities as a professional person towards the wider community (specifically, the stakeholders under the insolvency process); in acting professionally in his business dealings; in displaying a proper understanding and appreciation of his role and responsibilities; in avoiding bringing the profession into disrepute; and/or in acting within his level of competence.
21. There were also breaches of the Institute's Articles and Byelaws in that the Respondent's actions or omissions was likely to be discreditable to the Institute or the profession and/or the Respondent behaved, by doing something or not doing something, as considered by the DT to bring CGI or the profession into disrepute.
22. Accordingly, the DT finds that the Respondent:

Breach of Codes, Rules & Regulations

- (a) **CGI Byelaw 23.8(f)** - had broken any of the CGI's bye-laws or Charter or Regulations;
- (b) **Institute Article 25.1(d)** - had acted in breach of the Articles of Association of the Institute or any rules, regulations, codes of practice or conduct, directions or instructions made or established by or under the authority of the Council;

The disrepute of the Institute or Profession

- (c) **CGI Byelaw 23.8(d)** - had behaved, by doing something or not doing something, in a way considered by the DT to bring the CGI or the profession into disrepute, and
 - (d) **Institute Article 25.1(c)** - had conducted himself whether by act or default in a manner that might or was likely to be discreditable to the Institute or the profession.
23. The DT determines that, given the serious nature and consequences of the breaches, the impact that these have on bringing the reputation of the profession into disrepute, especially in the context of the adverse judicial comments, it would normally have required the imposition of substantial penalties, ranging from a long period of suspension of membership to requiring removal from membership.
 24. The DT members were nevertheless, impressed that the Respondent was a 35-years Institute Member, upright, and in good standing. In addition, it was believed that the findings of facts in the HCA case might have some mitigation on the penalties that the DT would wish to impose. As such, there was some merit in waiting for the completion of the HCA case prior to assessing the other disciplinary issues.

G. Decisions & Penalties

Decision

25. The DT makes it clear that it makes no findings that the Respondent has been dishonest, and the matter is approached purely from the perspective as to whether the Respondent has committed a breach of professional standards in his handling of the tax case. The breaches unfortunately were serious and incurred adverse judicial comments as well as the ORO's concerns. These marred an otherwise impressive career of the Respondent. The reputation of the profession was also brought into disrepute.
26. The nature of the breaches was such, that while mitigation might arise from the findings of the HCA case, the DT believed that action was required by the CGI pending the outcome of the HCA case.

Sanctions

27. Accordingly, the DT makes an **ORDER** that:

- (a) The Respondent's **Membership be suspended** pending resolution of the HCA case under the Institute Article 27.1(c) and CGI Byelaw 24.1(f), and the Respondent needs to continue to pay all membership dues and to comply with the Institute's applicable continuous professional development requirements upon him;
- (b) The Respondent's conduct be revisited dependent on the findings under the HCA case, including the reservation of the right by the Institute for further discipline against the Respondent, with credit for the time of suspension, where determined appropriate; and
- (c) This Decision shall be **published** on the Institute's website, with a summary in the CGj journal, and shall take effect after the expiry of the period to file an appeal with the Appeal Tribunal ('AT') or, in case of there being an appeal, until after exhaustion of the appeal procedures.

Costs

28. The DT **ORDERS** that, according to the Institute Article 27.1(g) and CGI Byelaw 24.1(b), the Respondent to **pay the Institute's costs of HK\$50,000** within 28 days from the date that notice is sent to the Respondent. In case there is a failure to pay the Institute's costs and penalties, the Institute shall be at liberty to commence recovery actions.

Note: According to the Institute Article 28 and CGI Byelaw 25, 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 AT, 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 the Institute within 28 days from the date of the Respondent being advised of this DT decision and may be given to the person by whom the notice of the decision was given or to the Secretary of the Institute or any person authorized to receive such notice. If the notice of intention to appeal is given by telephone or other electronic methods, it must be confirmed in writing within 14 days. The Respondent has waived the appeal process.

Neil McNamara FCG HKFCG
Acting Chairman, the Disciplinary Tribunal
The Hong Kong Chartered Governance Institute
China Division of The Chartered Governance Institute