

Tay Kim Chuan Patrick v Public Accountants Board
[2002] SGHC 9

Case Number : OM 600017/2001
Decision Date : 17 January 2002
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : G Raman (instructed) and Eben Ong (Loh Eben Ong & Partners) for the appellant; Lee Han Yang and Gabrielle Tan (Yeo-Leong & Peh) for the respondents
Parties : Tay Kim Chuan Patrick — Public Accountants Board

*Professions – Accountants – Duty of auditors – Standard of care required of auditors
– Professional misconduct – Breaches of Statement of Auditing Guidelines – Effect of Statement of Auditing Guidelines – Whether Public Accountants Board wrong in finding appellant guilty of charges
– Whether suspension for 18 months too harsh*

Judgment

GROUND OF DECISION

1. The appellant, Mr Patrick Tay Kim Chuan, who was suspended by the Public Accountants Board ("PAB") from practising as a public accountant for 18 months on the ground of professional misconduct, appealed against the PAB's decision. The PAB had found that he breached Rule 11 of the Public Accountants Board Rules 1989, which relates to the professional and technical standards expected of him as a public accountant, when he conducted the audit of Amcol Holdings Ltd for the year ended 31 December 1995. Mr Tay denied the allegation of professional misconduct and asserted that the penalty meted out to him by the Board was too harsh.

A. BACKGROUND

2. In June 1996, some directors of Amcol Holdings Ltd ("Amcol") informed the Stock Exchange of Singapore ("SES") about some irregularities in the management of the Amcol Group, whose principal activities included consumer electronics, property and resort development and equity investments. The SES informed Amcol, which had 29 subsidiaries and 12 associates and assets of nearly \$1.5 billion, that there should be a thorough review of the Group's operations and financial position to protect the interests of shareholders. The review was to be supervised by three new independent directors appointed for this purpose.

3. The new directors appointed Price Waterhouse as Special Accountants. On 24 July 1996, Price Waterhouse submitted their Special Accountants Report, which contained observations and comments on Amcol and the Group's operations and financial position. Following the report, the PAB appointed an Inquiry Committee in August 1997 to inquire into the conduct of the public accountants from the firm of BDO Binder ("BDO"), which was responsible for the audit of Amcol for the year ended 31 December 1995. The Inquiry Committee comprised four senior accountants and a lay person. It was chaired by Mr Steven Lim Kok Hoong, the managing partner of Arthur Andersen, and the other members of the Inquiry Committee were Mrs Sally Chan, the deputy director of the Accountant General's Office, Mrs Maria Lee-Low Lai Meng, a senior partner of KPMG Peat Marwick, Mr Willie Tay Kwang Lip, the managing partner of TS Tay & Associates, and Mr David Gerald Jeyasegaram, a lawyer.

4. In September 1997, pursuant to section 20(4) of the Accountants Act, the Inquiry Committee

appointed Dr Foo See Liang and Mr Shanker Iyer as Reviewers to jointly make whatever preliminary inquiries they thought necessary in respect of the subject matter of the inquiry. The Reviewers took the view that the results of their initial inquiries showed prima facie breaches by the auditors of professional pronouncements, including, but not limited to, the Statement of Auditing Guidelines ("SAG"), Statement of Accounting Standards ("SAS") and the Companies Act.

5. BDO had been the principal auditors of Amcol for several years. Mr Patrick Tay, a certified public accountant with 29 years of experience, admitted that he was the partner responsible for the audit in question. The relevant audit report was dated 30 April 1996 and was presented to Amcol's shareholders in June 1996. In the following month, Amcol was placed under judicial management and Ernst & Young replaced BDO as the auditors for Amcol.

6. Mr Tay submitted two written responses to the Inquiry Committee. The first was dated 30 November 1999 (the "first response") and the second was dated 7 October 2000 (the "second response"). At the hearing of the inquiry, Mr Tay faced a total of 19 charges concerning inadequate planning and a failure to conduct a proper review. It was alleged that he had breached, inter alia, SAGs and the Group Audit Planning Brief ("GAPB") guidelines.

7. The Inquiry Committee, before whom Mr Lee Han Yang, the PAB's counsel, and Mr G Raman, Mr Tay's counsel, appeared, found Mr Tay guilty of 16 of the 19 charges. Its overall conclusion was as follows:

By reason of the various breaches of the professional and technical pronouncements, the Inquiry Committee finds that the said Mr Patrick Tay has breached Rule 11 of the Public Accountants Board Rules 1989, and is thereby guilty of professional misconduct under section 21(1)(a)(ii) of the Accountants Act 1987, Cap 2A.

8. On 1 June 2001, the PAB suspended Mr Tay from practising as a public accountant for 18 months with effect from 1 July 2001. Mr Tay then lodged his appeal against the PAB's decision.

B. THE APPEAL

9. At the hearing of the appeal against the PAB's decision, Mr Tay claimed that the Inquiry Panel erred in finding him guilty of most of the charges faced by him. His counsel, Mr Raman, who contended that BDO had exercised its judgment in determining the necessary auditing procedures required in this case, pointed out that in *Re Kingston Cotton Mill Co (No 2)* [1896] 2 Ch 279, 288-289, Lopes LJ said that the role of an auditor was that of a watchdog and not that of a bloodhound. He asserted that the Inquiry Committee had expected Mr Tay to be a bloodhound. On the other hand, PAB's counsel, Mr Lee Han Yang, contended that Mr Tay's conduct fell far short of what can be expected of an auditor. In his view, Mr Tay paid scant regard to the promulgations of the PAB and his actions as Amcol's auditor bordered on disrespect and contempt for the rules of the accountancy profession.

The role of an auditor

10. Before considering the 16 relevant charges against Mr Tay, a consideration of the role of an auditor will be helpful. In *Re London & General Bank (No 2)* [1895] 2 Ch 673, 682, Lindley LJ said:

[An auditor's] business is to ascertain and state the true financial position of the company at the time of the audit, and his duty is confined to that. But then comes the question : How is he to ascertain that position? The answer is, by examining the books of the company. But he does not discharge his duty by doing this without inquiry and without taking any trouble to see that the books themselves show the company's true position. He must take reasonable care to ascertain that they do so. Unless he does this, his audit would be worse than an idle farce. Assuming the books to be so kept as to show the true position of a company, the auditor has to frame a balance sheet showing that position according to the books and to certify that the balance sheet presented is correct in that sense. But, his first duty is to examine the books, not merely for the purpose of ascertaining what they do show, but also for the purpose of satisfying himself that they show the true financial position of the company.

11. Lindley LJ's view was endorsed in *Wong Kok Chin v Singapore Society of Accountants* [1989] SLR 1129, 1148 by Yong Pung How J, as he then was, who added as follows:

While reasonable care and skill as first laid down in these 19th century cases still remains the standard required of an auditor, some recent authorities have generally recognised the more exacting nature of this standard in the light of modern day conditions. The importance of this has been emphasized by considering defaults in the light of the surrounding circumstances, having regard also to professional codes of standards and *guidelines* and to evidence of general professional practice. In particular, a court which is determining a case must guard against hindsight and only take into account knowledge available to the auditor at the time of default....

In determining whether there has been a breach by an auditor of the duty of reasonable skill and care, the court must therefore have regard to the overall background and circumstances in which the alleged breach occurred.

Charge No 1

12. The first charge against Mr Tay concerned the fact that the Reviewers found no evidence in the Group Audit Planning Brief ("GAPB") or in the other audit working papers that he had evaluated and documented the potential impact of the significant increase in the number of companies making losses and the significant decline in the profits of the Group after the draft accounts of the companies included in the consolidation for the year ended 31 December 1995 were made available to BDO. In fact, the Reviewers asserted that the GAPB was mainly prepared on the basis of accounts up to 30 June 1995. Mr Tay was alleged to have breached the following:

(a) SAG 5(11), which stipulates a list of matters that the auditor should consider when developing his overall plan for the expected scope and conduct of the audit;

(b) SAG 4(14), which states that plans should be further developed and revised as necessary during the course of the audit; and

(c) SAG 5(3), which states that planning should be continuous throughout the engagement.

13. The Inquiry Committee asserted that Mr Tay did not answer the charge against him. It said that his position was that as he had already performed the audit, audit planning was irrelevant and noted that he had explained his approach to auditing as follows:

If you want to do a good job, there are certain steps, procedures, but whether you should do procedure No 1 first or procedure No 2, for example, coming back to your cooking experience, what is there to pour in the lime juice in making rojak last but the rojak man prefers to put the lime juice in the blachan and all that and he mixes that first. At the end of the day, you still get a very good rojak dish.

14. PAB's counsel, Mr Lee, pointed out that Mr Tay had confused an "audit plan" with an "audit programme" and that his explanation in relation to the first charge concerned the execution of standard audit programmes and not audit planning.

15. At the hearing of the appeal, Mr Raman conceded that his client did not include the Group's deteriorating performance in the audit plan in question but submitted that this state of affairs could be ascertained from other documents, including the subsidiaries' accounts. This is not an answer to the first charge. Furthermore, it should not be overlooked that at the hearing of the inquiry, Mr Tay admitted that he had not carried out the requisite financial analysis to evaluate and document the significant increase in the number of companies making losses and the significant decline in the profits of the Group when the GAPB was prepared. There is thus no reason to fault the Inquiry Committee's finding on the first charge.

Charge No 2

16. The second charge against Mr Tay concerned his failure to consider in the audit plan the significance of the 12 material subsidiaries audited by other auditing firms. These 12 subsidiaries accounted for around 70% of the Group's turnover and around 65% of the Group's total cost of investments. In the year ended 31 December 1995, 10 of them suffered losses.

17. The Reviewers found no evidence in the GAPB that a proper risk analysis was performed on the accounts of each of the said subsidiaries and on their overall significance to the Group. It was also alleged that there was no evidence that the auditor reviewed and revised the audit plan of each of the 12 subsidiaries and of the Group after the draft accounts of the companies for the year ended 31 December 1995 were made available to BDO. Mr Tay was accused of having breached SAG 5(11), SAG 4(14) and SAG 5(3), which have been referred to above.

18. Mr Tay pointed out that each subsidiary was subject to an audit under the same professional rules and that the auditors of these companies submitted reports and draft audited accounts to BDO for testing the consolidation work sheets prepared by the client. He added that the review and evaluation were performed continuously over the course of the audit. Finally, he claimed that BDO relied on a report prepared by Merrill Lynch in January 1996, which evaluated the financial performance and position of the Group.

19. The Inquiry Committee noted that the auditors of the subsidiaries that were not audited by BDO planned their audit and scope of work for the purpose of being able to express an opinion on the financial statements of each subsidiary standing alone. Those auditors had no responsibility to consider the financial position and results of the Group as a whole. Only BDO had this responsibility.

As such, BDO was required to determine the adequacy of audit work performed not only for expressing an audit opinion on the financial statements of the subsidiaries standing alone but also for expressing an opinion on the consolidated accounts. The Inquiry Committee thought that BDO had not done what was required of them as Amcol's auditors. As for the Merrill Lynch Report, it found that Mr Tay failed to consider the serious audit implications in this report when he was planning the audit. In fact, this omission is the subject of the fourth charge, which will be discussed below. During the hearing of the appeal, there was no credible evidence that the finding of the Inquiry Committee with respect to the second charge was defective in any way.

Charge No 3

20. The third charge concerned Mr Tay's failure to consider the corporate reconstruction exercise involving Amcol Plastic, Amcol Engineering and Amcol Multitech in the audit plan of each of these companies. The Reviewers found "no evidence that the audit plans of the 3 companies were reviewed and revised in the light of the corporate restructuring exercise and in accordance with paragraph 10.3 of the GAPB". Mr Tay was alleged to have breached SAG 5(11), SAG 4(14) and SAG 5(3), which have been referred to in relation to the first charge.

21. Mr Tay's answers to this charge were inconsistent. Initially, he said that as the corporate reconstruction was only made known to BDO in December 1995, it could not be covered in the relevant audit plan. However, in his second response dated 7 October 2000, he altered his position and stated as follows:

BDO was aware of the reconstruction and consequently in preparing the Group Planning Brief and in anticipation, BDO included such a matter in said paragraph 10.3".

22. Paragraph 10.3 of the Group Planning Brief merely stated that the Group was "in the process of consolidating certain of their activities, being scaling down substantially the operations of certain subsidiaries and disposal of certain investment and purchase of other business". Mr Tay thus did not answer the charge that the audit plans of Amcol Engineering, Amcol Plastic and/or Amcol Multitech were not reviewed or revised in the light of the corporate restructuring exercise and in accordance with para 10.3 of the Group Planning Brief. In fact, he took the view that the Group Planning Brief "provided excellent direction, guidance and the slant of the audit to the auditors". He added that no further value could be added to the audit process by re-writing or re-phrasing the contents of the individual audit plans of Amcol Plastic, Amcol Engineering and Amcol Multitech.

23. Mr Tay thus did not furnish any credible reason as to why the Inquiry Committee's verdict with respect to this charge was unjustified.

Charge No 4

24. The fourth charge against Mr Tay was that he failed to consider in the audit plan of the Amcol Group the serious audit implications in a 1996 report by Merrill Lynch, which referred to the following concerns regarding Amcol:

(a) It had no core business and lacked management control in a number of its joint ventures;

- (b) It had a poor track record of investments in several instances;
- (c) It was significantly more highly geared than comparable companies;
- (d) Its forecasted earnings were primarily from non-recurring sources. The Group's source of earnings after Costa Rhu was uncertain;
- (e) Its forecasted earnings and cash flow forecast were expected to deteriorate after two years;
- (f) It had many divisions which made insignificant or even negative contributions to net income;
- (g) It had significant exposures to low earning businesses; and
- (h) Amcol's earnings and cash flow streams were highly dependent on investments such as Costa Rhu. With the maturing of such investments, the future source of earnings were uncertain given the absence of substantial recurring earning streams.

25. For failing to pay sufficient attention to the serious concerns raised in the Merrill Lynch Report, Mr Tay was accused of having breached SAG 4(14), SAG 5(3) and SAG 5(11), which have been referred to above in relation to the first charge.

26. Mr Tay's response to the fourth charge was as follows:

The carrying values of the assets were sufficiently covered by the audit programmes, which were performed adequately at the subsidiary, company and group levels and therefore BDO obtained sufficient audit evidence to form an opinion on the entities.

27. The Inquiry Committee saw in Mr Tay's response an indication that BDO did not vary its originally planned approach in auditing to take into account the specific concerns raised in the Merrill Lynch Report and noted that there was no documentation of the reasons for taking this position. It also noted that Mr Tay had stated in his second response on 7 October 2000 that he took Merrill Lynch's comment that forecasted earnings was expected to deteriorate after two years as a reason for concluding that from "an audit point of view, the review by Merrill Lynch indicates the group is a going concern at least for the next 12 months". However, there was no evidence that Mr Tay reviewed or revised his audit plans for the audit of the Group accounts to include additional appropriate procedures to consider the potential effect of the matters set out in the Merrill Lynch Report. The Inquiry Committee thus concluded that the fourth charge was clearly proven. No valid reason was furnished as to why the Inquiry Committee had been wrong.

Charge No 5

28. The fifth charge concerned Mr Tay's failure to comply with materiality guidelines stipulated in the GAPB. The materiality levels for balance sheet items of 9 subsidiary companies were set at 5% of the total assets, as opposed to 5% of net assets under the GAPB. No reasons were given for the deviation from the guideline stipulated in the GAPB for the adoption of the higher materiality level. Mr Tay was accused of having breached SAG 4(11), which requires an auditor "to document matters

which are important in providing evidence that the audit was carried out in accordance with the basic principles".

29. Mr Tay, who admitted that there had been an error, insisted that this was due to an oversight. In his written response dated 7 October 2000, he stated as follows:

It is unlikely that the % would have been based on net assets and they would have dismissed it as a typographical error.

30. The Inquiry Committee did not accept Mr Tay's explanation and I was not convinced that the Committee's finding on the fifth charge was wrong.

Charge No 6

31. The sixth charge against Mr Tay concerned his failure to check whether or not the Amcol Financial Manual ("AFM") had been complied with. He was alleged to have breached SAG 7(15), which requires an auditor to "review the accounting system and related internal controls to gain an understanding of the flow of transactions and the specific control procedures to be able to make a preliminary evaluation and identification of those internal controls on which it might be effective and efficient to rely in conducting his audit." He was also alleged to have breached SAG 7(28), which requires an auditor who has become aware of weaknesses in internal control to make management aware, on a timely basis, of material weaknesses which have come to his attention.

32. The audit planning briefs of 6 of Amcol's subsidiaries provided that audit tests were to be carried out to ensure that the company has complied with the procedures and practices laid down in the AFM. The importance of the tests was also emphasised in the Group's audit planning memorandum, in which BDO stated that the "audit should also ensure that the standing instructions contained in the AFM are adhered to by [Amcol] and its subsidiaries". Material deviations from the AFM were to be highlighted to the Board and the Audit Committee.

33. Mr Tay's response to this charge was as follows:

Although the AFM has laid down certain procedures and practices, most of these were general in nature and could not be specifically tested for compliance. Hence, we considered the operations of the company as a whole and noted that there was no significant non-compliance. It was verbally communicated by the audit partner and manager to the management of [Amcol] that the AFM should be reviewed and re-drafted to provide more specific guidelines to be more meaningful. The basic objective of an audit is to ensure that the financial statements (not the AFM) were true and fair.

34. The Inquiry Committee, which found that no work had been performed by the auditor on the AFM, was surprised that BDO, which had stressed the importance of testing the AFM in the audit plans, abandoned the AFM on the ground of its irrelevance. It thought this to be particularly disturbing because BDO had been the auditor of Amcol and some of its subsidiaries for a number of years.

35. Finally, the Inquiry Committee found no evidence that the inadequacies of the AFM were communicated to the company as required by SAG 7(28).

36. At the hearing of the appeal, Mr Raman submitted that the company's general manager had been orally informed of the inadequacies in the AFM. However, this assertion was not corroborated in any way. No additional light was shed on the matters put before the Inquiry Committee. In these circumstances, there are no grounds for disagreeing with the Inquiry Committee's finding on the sixth charge.

Charge No 7

37. The seventh charge against Mr Tay was that no audit planning briefs had been prepared for three of Amcol's subsidiaries, namely Amcol China, Amcol International and Amcol Enterprises. He was alleged to have breached SAG 4(12), which requires an auditor to plan his work to enable him to conduct an effective audit in an efficient and timely manner, and SAG 5(12), which requires an auditor to document his overall plan.

38. In his response dated 7 October 2000, Mr Tay stated that it was his policy not to prepare planning documentation where the audit fee for a company is, as it was in the case of the companies in question, less than \$5,000. He also tried to justify the lack of such documentation by asserting that sufficient direction had been provided to the audit staff and that sufficient audit evidence had been considered. The Inquiry Committee thought it inappropriate to dispense with the requirement of planning documentation merely because the audit fee was less than \$5,000. In its view, the audit fee, which is often agreed upon after negotiations with the client, may bear no direct relationship to the risk, complexity and/or size of a company. The Committee thus found him guilty of the charge in question. No evidence was submitted at the hearing of the appeal as to why Mr Tay's practice of not preparing the requisite audit plans where the audit fee is less than \$5,000 ought to be countenanced. In these circumstances, the Inquiry Committee cannot be faulted for taking Mr Tay to task for not preparing the relevant audit planning briefs.

Charge No 9

39. The ninth charge concerned Mr Tay's failure to identify errors in the presentation of the Amcol Infrastructure accounts. Contrary to the Companies Act, the amounts owed to the holding company and minority shareholders were treated as part of shareholders' equity. He was accused of having breached SAG 4(10), which states that an auditor "should carefully direct, supervise and review work delegated to assistants" and that the auditor "should ensure that work performed by other auditors or experts is adequate for his purpose". He was also charged with having breached SAG 8(10), which states that the work performed by each assistant should be reviewed by personnel of equal or higher competence to determine whether the work has been performed in accordance with professional and firm standards, whether the work performed and the results obtained have been adequately documented, whether any significant audit matters remain unresolved and whether the objectives of the audit procedures have been achieved and the conclusions expressed support the auditor's opinion on the financial information. Finally, he was said to have breached SAG 8(11), which notes that the major review stages can often be identified in an audit include a review of the initial audit plan and the audit programme, a review of the study and evaluation of internal control, a review of the documentation of the audit evidence obtained and the conclusions drawn and a review of the financial information and proposed auditor's report.

40. At the hearing of the appeal, Mr Tay reiterated that the errors were typographical errors. The Inquiry Committee did not believe that the accounts, which had been reviewed by the partner and manager, could contain such obvious errors. It thus believed that Mr Tay had not supervised and

reviewed the work of his assistants and had breached SAG 4(10), SAG 8(10) and SAG 8(11). I was not convinced that the conclusion of the Inquiry Committee with respect to the ninth charge was wrong.

Charge No 10

41. The tenth charge against Mr Tay concerned the Reviewers' allegation that in relation to Amcol Plastic, they found no evidence that the audit programme to review credit notes issued after the end of the year had been performed. Mr Tay was thus alleged to have breached SAG 4(10), SAG 8(10) and SAG 8(11), which have been referred to in relation to the ninth charge.

42. In his initial response, Mr Tay admitted his default when he stated as follows:

Yes, we have missed out on reviewing credit notes issued after the year end.

43. In his second response on 7 October 2000, Mr Tay denied that audit work had not been done to establish the effect of credit notes. The Inquiry Committee believed that Mr Tay's initial admission that he had not reviewed credit notes reflected the true position. It noted that he did not explain satisfactorily how he knew that no credit notes were issued after the end of the year and added that even if this is true, the audit programme step should have been completed with an explanatory footnote as to why that step was no longer required.

44. During the appeal, no satisfactory explanation was given as to why Mr Tay provided contradictory responses to the charge against him. I was not satisfied that the Inquiry Committee was not entitled to come to the conclusion that it did in relation to the tenth charge.

Charge No 11

45. The eleventh charge concerned Mr Tay's failure to complete audit programmes. In relation to Amcol Plastic, it was alleged that there was a lack of evidence of review by the engagement manager and partner in the audit programmes and working papers. Furthermore, it was alleged that Mr Tay did not carry out Test 8 on the audit programme on share capital, reserves and dividends. He was accused of having breached SAG 4(10), SAG 8(10) and SAG 8(11), which were referred to in relation to the ninth charge.

46. As far as the failure to properly sign off audit programmes is concerned, Mr Tay admitted the error. He said that this was due to an oversight and pointed out that it should not be overlooked that he had read and checked every page.

47. The Inquiry Committee found that as Mr Tay had admitted to the identified failures, he was guilty of the charge in question. In its view, Mr Tay's attempts to respond to questions on this lapse on his part by referring to his review of the audit work papers showed that he was evasive. It also noted that Mr Tay had accepted that if audit programmes are not signed and dated, it would be "much more difficult to establish that the programme steps were completed".

48. At the hearing of the appeal, the Inquiry Committee's findings were not satisfactorily challenged. As Mr Tay had admitted to the lapses referred to in the eleventh charge against him, there are no grounds for disagreeing with the verdict of the Inquiry Committee in relation to the eleventh charge.

Charge No 13

49. The thirteenth charge concerned Mr Tay's failure to date the audit planning briefs for Amcol Rex and Amcol Warehouse. He was thus accused of having breached SAG 8(11), which was referred to above in relation to the ninth charge.

50. At the hearing of the appeal, Mr Tay admitted that he was guilty of this charge.

Charge No 14

51. The fourteenth charge concerned, inter alia, Mr Tay's failure to properly date the audit programme of the Amcol Group. It was reviewed and signed on 2 August 1996, about three months after the date of the audit report, namely 30 April 1996. Mr Tay was said to have breached SAG 4(10) and SAG 8(10), which have been referred to earlier on in this judgment. At the hearing of the appeal, Mr Tay admitted that he was guilty of this charge.

Charge No 15

52. The fifteenth charge against Mr Tay related to his failure to obtain an updated management representation letter. In the audit of Amcol Rex, the management representation letter was dated 10 January 1996 whereas the audit report was dated 8 March 1996. This difference of two months breached SAG 20(12), which states as follows:

A management letter should normally be dated the same date as the auditor's report on the financial statements. However, in certain circumstances in respect of specific transactions, a separate representation letter may also be obtained during the course of the audit.

53. Mr Tay's first response to this charge was as follows:

We acknowledge that we should have obtained a revised management letter but did not due to oversight.

54. In his second response, Mr Tay asserted that the management representation letter was irrelevant and cited his 30 years of experience in Australia to support this view. He also said that the Inquiry Committee failed to note that SAG 20(4) provides that the auditor can obtain evidence of management's acknowledgement of such responsibility and approval from relevant minutes of meetings of the management board or other similar body or by obtaining a written representation from management of a signed copy of the financial statement. He added that the financial statements were signed by the directors before the auditors signed them and the only circumstance which had changed between the earlier date and the date of the financial statements was the compulsory acquisition of the leasehold land owned by Amcol Rex. However, the acquisition had been gazetted and independently verified.

55. At the hearing of the appeal, no convincing evidence was introduced to support Mr Tay's assertion that an updated management letter was not required in the circumstances of the case. As Mr Tay did not have the requisite management letter, he had no defence to the fifteenth charge.

Charge No 16

56. The sixteenth charge concerned a failure to take into account post balance-sheet events. It was alleged that Mr Tay failed to take into consideration the fact that the audit reports of most of the Group's stable of companies were dated earlier than the audit report date for the Group's accounts, namely 30 April 1996. The Reviewers found insufficient evidence of a review of subsequent events from the respective dates of their audit reports to 30 April 1996. Mr Tay was alleged to have breached SAG 4(11) and SAG 10(4), which have been referred to earlier on in this judgment. In addition, he was alleged to have breached SAG 24(7) and (8) and SAG 20(5) and (6).

57. SAG 24(8) provides that the procedures to identify subsequent events should be performed as near as practicable to the date of the auditor's report. As for SAG 24(7), it states as follows:

The auditor is not expected to conduct a continuing review of all matters to which he has previously applied procedures and reached conclusions. However, the auditor should perform procedures designed to satisfy himself that all subsequent events up to the date of his report that may require adjustment of or disclosure in the financial statements have been identified. These procedures are in addition to specific procedures which may be applied to transactions occurring after the balance sheet date designed to obtain evidence as to account balances as at the balance sheet date, for example, the examination of data to ensure that transactions have been recorded in the proper period.

58. SAG 20(5) states that where representations are made by management whether unsolicited or in response to specific inquiries, the auditor should, when such representations relate to matters which are material to the financial statements, seek corroborative audit evidence from sources inside or outside the entity, evaluate whether the said representations appear reasonable and consistent with the other audit evidence obtained and consider whether the individuals making the representations can be expected to be well-informed on the matter. It adds that if the said representation is contradicted by other evidence, the auditor should investigate the circumstances and, when necessary, reconsider the reliability of other representations made by management. SAG 20(6) makes it clear that representations by management cannot be a substitute for other audit evidence that the auditor would expect to find.

59. Mr Tay referred to the work done by his firm from 13 March 1996 and 23 April 1996 on the rights issue by Amcol as proof that review work had been carried out subsequent to 31 December 1995. He claimed that during the Amcol rights issue exercise, he concurrently covered subsequent developments relating to Amcol and its subsidiaries. However, the Inquiry Committee took the view that work concerning the rights issue "was not suitable for complying with the requirements in auditing subsequent events in a statutory audit". In any case, the audit programme on subsequent events presented by BDO concerned Amcol, the holding company, and did not specifically address work to be done with respect to its subsidiaries. It thus found Mr Tay guilty of this charge. I saw no reason to question this finding of the Inquiry Committee.

Charge No 18

60. The eighteenth charge concerns a failure to adequately consider the audit implication of control deviations discovered when payment vouchers were checked. For instance, in the audit of Amcol, all the 40 payment vouchers checked had not been authorised by the appropriate officers. It was alleged

that the causes of the control deviations and their implications on the audit were not considered. The Reviewers also noted that there was no evidence of work to ascertain the adequacy of the segregation of duties to prevent and detect duplicate payments. It was further alleged that Mr Tay had not communicated the weaknesses in the internal controls to the management. Mr Tay was alleged to have breached the following:

(a) SAG 7(23), which notes that deviations from prescribed controls may be caused by factors such as changes in key personnel and human error and requires an auditor to make specific enquiries concerning these matters;

(b) SAG 7(24), which provides that based on the results of his compliance procedures, the auditor should evaluate whether the internal controls are adequate for his purposes;

(c) SAG 7(28) requires an auditor to make his client aware of weaknesses in internal control; and

(d) SAG 5(16), which provides that the audit plan and related programme should be reconsidered as the audit progresses and that such consideration is based on the auditor's review of internal control, his preliminary evaluation thereof, and the result of his compliance and substantive procedures.

61. Mr Tay's response to this charge was as follows:

[T]he control reliance audit was not used for the audits of Amcol companies. Consequently, the PAB Reviewers' comments are not relevant.

62. He also pointed out that the Inquiry Committee failed to take into account the evidence in the working papers that the control reliance audit approach was not used for the audit of Amcol companies. The audit planning brief stated that it would be more cost effective to apply substantive testing procedures rather than internal controls. He also claimed that a draft management letter dated 30 June 1996 containing comments on, inter alia, reallocation of expenses to related companies, approval on payment vouchers and inter company balances was sent to the client.

63. The Inquiry Committee found no evidence that deviations from internal controls were fully considered and the risk assessed. As for the lack of communication of the weaknesses of the internal controls to the management of Amcol, the Committee said that there was no evidence that a management letter was finally issued to the client. As such, it found that this charge had also been proven. I saw no reason to disagree with this conclusion.

Charge No 19

64. The final charge against Mr Tay concerned a failure to obtain sufficient appropriate evidence to support the audit opinion in respect of SAS 19. More specifically, the complaint was that in relation to the accounts of Amcol Rex for the year ended 31 December 1995, he issued an unqualified opinion although he had given a qualified opinion in the 1994 audit as a result of his disagreement with management on the capitalisation of interest cost on borrowing relating to a development site owned by Amcol Rex. For the year ended 31 December 1995, interest capitalised into development properties was \$6,032,269. Out of this, \$1,479,924 was capitalised in the year under review. The Inquiry Committee could not understand why Mr Tay did not qualify the 1995 accounts and he was accused

of having breached, inter alia, SAG 4(21), which requires an auditor to review and assess the conclusions drawn from the audit evidence obtained as the basis for his opinion on the financial information.

65. Mr Tay denied that he erred by not qualifying Amcol Rex's accounts for 1995. To him, the capitalisation of interest cost of \$1.479m was not material at Group level or at the subsidiary company level. In fact, it constituted only about 4% of the total assets of Amcol Rex.

66. The Inquiry Committee took the view that as the proposed development was no longer feasible due to the compulsory acquisition of the proposed development site, Amcol Rex should not have capitalised the interest cost as this did not comply with SAS 19. It explained its position as follows:

In the view of the Inquiry Committee there was no approval received from the relevant authorities to develop the site and this lack of approval could not be attributable to normal delays in permits in Singapore because the risk of non-approval was evident from as far back as in 1992. We find no basis for the auditor of Amcol Rex not qualifying his audit report of the 1995 accounts in view of the capitalisation of interest cost as development properties. The Inquiry Committee was also disturbed by the responses to questions given by Mr Tay during the hearing on 19 October 2000 [H]e stated that he lifted the qualification in 1995 because Amcol Rex became a subsidiary of Amcol Holdings.

67. The Inquiry Committee thus held that by not qualifying his audit report, Mr Tay breached SAG 4(21), which states as follows:

The auditor should review and assess the conclusions drawn from the audit evidence obtained as the basis for the expression of his opinion on the financial information, This review and assessment involves forming an overall conclusion as to whether:

- The financial information has been prepared using acceptable accounting policies which have been consistently applied;
- The financial information complies with the relevant legislation and regulations so far as they affect financial information and promulgations of the Singapore Society of Accountants;
- The view presented by the financial information as a whole is consistent with the auditor's knowledge of the business of the entity; and
- There is adequate disclosure for a true and fair presentation of the financial information.

68. Mr Tay defended his decision not to qualify the 1995 accounts by pointing out that the capitalisation in question was in order as "the company had actively been submitting applications upon applications to the relevant authorities but as the government had not yet finalised their MRT plans then, it was unable to give the company any firm refusal to develop." He added that he had seen the drawings which Amcol Rex proposed to erect on the site.

69. It ought to be noted that in his response on 7 October 2000, Mr Tay admitted that he knew when he issued his audit report for 1995 that the property intended for development had already been compulsorily acquired by the government. After considering all the arguments, I accept that Mr Tay ought to have qualified Amcol Rex's accounts for the year ended 31 December 1995. As such, I do not disagree with the conclusion of the Inquiry Committee in relation to the nineteenth charge.

C. WHETHER THE PENALTY WAS TOO HARSH

70. Mr Tay's assertion that a suspension of 18 months was too harsh will now be considered. He reiterated that the SAGs which he had breached were mere guidelines with no binding force. He pointed out that the fact that the SAGs have now been replaced by Singapore Standards of Auditing, which must be complied with, should not be overlooked. It was also argued that there is a degree of flexibility and a certain amount of discretion given to an auditor on whether or not to follow the guidelines strictly, and where a situation warrants it, the auditor may depart from the guidelines.

71. There is no doubt that at the very least, the SAGs are statements of minimum standards to be adhered to by practising accountants. Mr Tay did not present any credible evidence as to why he was justified in not following the guidelines. He failed to establish that the alternative procedures followed by him were acceptable. Mr Raman referred to the affidavit of Mr Kaka Singh, an accountant with 30 years of experience, to the effect that he "concurred with the various replies that [Mr Tay] has made to the observations, comments and charges against him". Mr Singh was not called to substantiate his assertion. A blanket statement by him that he agreed with all that Mr Tay had said cannot advance the latter's case very far. This is especially since Mr Tay had accepted during the hearing of his appeal that he was guilty of a number of the charges.

72. The Inquiry Committee accepted that the test of professional misconduct is that set out in *Chew Kia Ngee v Singapore Society of Accountants* [1988] SLR 999. In that case, LP Thean J, as he then was, substantially agreed with the following passage from the Pape J's judgment in *Mercer v Pharmacy Board of Victoria* [1968] VR 72, 85:

In my view 'conduct discreditable to a pharmaceutical chemist' includes any conduct in relation to the carrying on of the business of a chemist which would be reasonably regarded by other chemists of good professional competence as calculated to destroy or lower public confidence in that chemist, or as injuring the credit or standing of the chemist in his professional capacity. I do not think it necessary that his conduct should be dishonest or fraudulent, or that it should involve any moral turpitude. It is enough if it brings discredit on him as a pharmaceutical chemist or on the profession as a whole. Nor do I think it necessarily follows that conduct which is due solely to negligence or inadvertence cannot be said to be discreditable conduct, because the chemist is in a position where his duties are to a large extent laid down by Regulations or by the Act, and where great care is required in the carrying out of those duties and because failure to exercise that degree of care expected of him must necessarily lower public confidence in him and discredit him in the eyes of his professional brethren.

73. When referring to the above-mentioned test in *Wong Kok Chin v Singapore Society of Accountants* [1989] SLR 1129, 1140, Yong Pung How J, as he then was, said that a practical test could have been if reasonable people, on hearing what the accountant has done would have said without hesitation that as an accountant, he should not have done it.

74. The Inquiry Committee did not mince its words when it explained why it thought that Mr Tay was guilty of professional misconduct and why he ought to be suspended. In paragraph 6.1 of its report, it stated as follows:

The Committee found that Mr Patrick Tay had not observed several of the relevant professional pronouncements in the conduct of the audit of Amcol

Holdings Ltd and subsidiaries in many areas. His overall attitude towards SAGs was found to be callous and disturbing. His approach to the audit of this significant group of companies appeared to be casual and the documentation of work done and conclusions therefrom was totally absent in many instances. Supervision of assistants and the quality of his review also appear to be lacking as evidenced by the many instances of errors found, inconsistency in documentation and the manner in which audit programmes were left unsigned or incorrectly completed. Significant audit procedures were missing as evidenced by the lack of evidence of appropriate work done in reviewing subsequent events at the subsidiaries. In planning his audit he did not appear to have taken into consideration significant factors like the significant deterioration in the profitability of the group and the results of the review by Merrill Lynch. He did not take the necessary steps to update his initial planning to take into account latest relevant information that became available during the course of his work. In the view of the Committee his conduct of the audit of Amcol Holdings and its subsidiaries has rendered him unfit to be a public accountant and would bring the profession of public accountancy into disrepute.

75. The Inquiry Committee made it plain in paragraph 6.3 of its report that it regarded Mr Tay's breaches as serious in nature. In fact, four of the five committee members recommended to the PAB that Mr Tay be suspended for the maximum permitted period of two years while the remaining member thought that Mr Tay's professional misconduct was so grave that his registration as a public accountant ought to be cancelled. Notwithstanding these recommendations, the PAB suspended Mr Tay for only 18 months. Taking all circumstances into account, it has not been established that the penalty imposed by the PAB ought to be varied in any way.

D. CONCLUSION

76. For reasons already stated, Mr Tay's appeal is dismissed with costs.

Sgd:

TAN LEE MENG
JUDGE

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