

## **Clarification on case decision in Courts**

### **Wong Ching Yong v Malaysian Institute of Accountants**

#### **Brief Facts**

- 1) A Notice of Complaint was issued to Wong Ching Yong (“**WCY**”) by the Malaysian Institute of Accountants (“**MIA**”) following a review conducted on WCY by the Practice Review Committee.
- 2) On or about 28.9.2017, a mention was held by MIA’s Disciplinary Committee (“**the DC**”) for the complaint against WCY whereby the charge was read to WCY.
- 3) During the mention, WCY admitted that he understood the charge and pleaded guilty/admitted to Part A of the charge (being the factual portion of the charge) and wanted to be heard on Part B of the charge. Thus, the DC had set a date for a further hearing date of the matter.
- 4) On or about 27.3.2018 a hearing for the charge against WCY was conducted by the DC whereby WCY was represented by advocates. WCY confirmed his admission to Part A of the charge during the hearing. Furthermore, WCY and his advocates were given their chance to be heard on Part B of the charge.
- 5) On 3.9.2018, the DC had found that WCY was guilty of the charge against him.
- 6) On 3.10.2018, WCY had filed an appeal against the whole decision of the DC to the MIA’s Disciplinary Appeal Board (“**the DAB**”).
- 7) On 13.6.2019, the DAB had upheld the decision of the DC.
- 8) On 11.9.2019, WCY applied for leave to commence judicial review against the decision of the DC and the DAB.

#### **JUDICIAL REVIEW AT THE HIGH COURT**

- 9) The procedure of Judicial Review is not a challenge to the correctness of the decision made but instead a challenge to the procedure adopted in the decision-making process at the Disciplinary Committee.
- 10) The High Court had dismissed WCY's application for Judicial Review. In doing so, it had decided:-
- a) There was no failure of quorum.
  - b) There was only one charge as Part A and Part B are tied to the same fact which is WCY's breach of ISA 230 and ISA 500.
  - c) WCY had pleaded guilty so there was no need for a full trial.
  - d) Rule 16 of the Malaysian Institute of Accountants (Disciplinary) (No. 2) Rules 2002 does not apply as the factual basis of the charge is not disputed and has been admitted.
  - e) WCY had been given the right to be heard on 27.3.2018.

#### **WCY'S APPEAL TO THE COURT OF APPEAL**

- 11) Dissatisfied with the decision of the High Court, WCY had filed an appeal on 14.2.2020.
- 12) On 21.6.2022, the Court of Appeal had allowed WCY's appeal against the decision of the High Court.
- 13) The Court of Appeal had not provided any detailed grounds of decision despite requests for the same. However, the Court of Appeal decided as follows:-

*“Having considered the submission of the parties, we are in the agreement with the submission of the learned counsel of the Appellant. We find that there is appealable error committed by the learned Judge the High Court that warrant appellate intervention. We agree that there is occurrence of procedural impropriety and breach of natural justice against the Appellant by the DC. As a result, the decision of the board is tainted and flawed. The learned High Court has erred on this and for not allowing the JR application. We find merit in the JR application. We therefore allow the appeal*

*of the Appellant with cost. We set aside the order of the High Court, the JR is allowed as per prayer sought herein. The decision of the DC and Board is set aside...”*

Comment:- the principle in this decision was that since the Respondent had only agreed to the plea of guilt for Part A but did not agree for Part B, the Court considered that it was a qualified plea and not absolute. Thus, the DC ought to have conducted a full proceeding by calling witnesses.

## **MIA'S APPLICATION FOR LEAVE TO APPEAL TO THE FEDERAL COURT**

14) On 19.7.2022, MIA had applied for leave to appeal to the Federal Court raising a few questions of law by virtue of exclusive jurisdiction of the Federal Court in Article 128(1) Federal Constitution – to determine (a) any question on the validity of law made by Parliament or by the legislature of a state; and (b) disputes on any other question between states or between the Federation and any state.

15) Upon hearing the application on 16.5.2023, the Federal Court dismissed MIA's application. No detailed grounds/reasons were provided for the dismissal as of now despite a written request to the Federal Court.