

IN THE MATTER OF

The complaints made under section 34(1) and 34(1A) of the Professional Accountants Ordinance (Cap.50)

BETWEEN

The Practice Review Committee of the Hong Kong Institute of Certified Public Accountants

FIRST  
COMPLAINANT

The Registrar of the Hong Kong Institute of Certified Public Accountants

SECOND  
COMPLAINANT

AND

Ms. Chan Wai Ping  
(Membership no.: A15404)

RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants

Members: Ms. LAU, Wan Ching (Chairman)  
Mr. LEUNG, Ka Yau  
Mr. LI, Pak Ki  
Mr. CHOI, Wai Wing

Date of the Complainants' Written Submission on Sanctions & Costs: 9 June 2023

Date of the Respondent's Written Submission on Sanctions & Costs: 21 July 2023

Date of Reasons for Decision: 12 May 2023

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**DECISION ON SANCTIONS AND COSTS**

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**(A) INTRODUCTION**

1. On 12 May 2023, this Disciplinary Committee found that both the First Complaint and the Second Complaint against the Respondent were proved (the "**Decision**"). Directions were given to the parties to make written submissions on sanctions and costs (the "**Direction**").
2. This Disciplinary Committee will not repeat what were already set out in the Decision, however, where appropriate, will simply refer to the parts of the discussion in the Decision and will also adopt the same definitions and abbreviations in the Decision.

3. In compliance with the Direction, the Complainants provided written submissions on sanctions and costs on 9 June 2023.
4. The Respondent failed to comply with the Direction and did not submit any submission on sanctions and costs by 7 July 2023 (“**Respondent’s Submission Deadline**”) and even the deadline was subsequently extended as directed by the Chairman, the Respondent still submitted out of time without any explanation. For further details, please see Part B below.
5. This Disciplinary Committee has considered all submissions of the parties and precedents in relation to sanctions and costs and does not propose to set out herein all their submissions made. In gist, the Complainants submitted that in view of the precedents, aggravating factors and the seriousness of the complaints, the appropriate sanctions as proposed by the Complainants should be:
  - (a) a public reprimand;
  - (b) cancellation of practising certificate and not reissued for at least 24 months;
  - (c) removal from the register for at least 24 months;
  - (d) payment of costs and incidentals in full.
6. In the submission on sanction and costs, the Respondent recapped paragraphs 7 to 8 of the Complainants’ answer in the Checklist and submitted that the Complainants’ proposal on sanction in the Checklist should be adopted, i.e.,
  - (a) a public reprimand;
  - (b) a penalty not exceeding HK\$50,000 to the Hong Kong Institute of Certified Public Accountants;
  - (c) payment of costs and incidentals.

## **(B) DISCUSSION**

### **(i) Approach in deciding sanctions**

7. The Disciplinary Committee noted that it has a wide discretion on the sanctions it might impose under section 35(1) of PAO (Cap.50) which include any one or more of the following orders:
  - (a) an order that the name of the certified public accountant be removed from the register, either permanently or for such period as it may think fit;
  - (b) an order that the certified public accountant be reprimanded;
  - (c) an order that the certified public accountant pay a penalty not exceeding \$500,000 to the Institute (Hong Kong Institute of Certified Public Accountants);
  - (d) an order that the certified public accountant pay the costs and expenses of and incidental to an investigation against him;
  - (e) an order that the practising certificate issued to the certified public accountant be cancelled;
  - (f) an order that a practising certificate shall not be issued to the certified public accountant either permanently or for such period as the Disciplinary Committee may think fit.
8. Also, this Disciplinary Committee should bear in mind the objects of the Institute as set out in section 7 of PAO (Cap. 50) which include:
  - (a) to regulate the practice of the accountancy profession;
  - (b) to represent the views of the profession and to preserve and maintain its reputation, integrity and status; and
  - (c) to discourage dishonourable conduct and practices by certified public accountants,

and for this purpose to hold inquiries into the conduct of certified public accountants, firms and corporate practices.

9. To ensure reasonable consistency and fairness in the disciplinary orders be imposed, this Disciplinary Committee should take reference to the Guideline to Disciplinary Committee for Determining Disciplinary Orders (“**Guideline**”) though it is not binding. According to paragraph 1.4 of the Guideline, sanctions should not only be proportionate to the nature of the failure and the harm or potential harm caused by the breach, but also with the aim to:
- (a) protect public interest;
  - (b) deter non-compliance with professional standards;
  - (c) maintain and promote public confidence in the profession; and
  - (d) declare and uphold proper standards of conduct and performance.

**(ii) Seriousness of the complaints**

10. This Disciplinary Committee agreed with the Complainants that before taking into account of any aggravating factor, the totality of the complaints against the Respondent put the seriousness of the complaints to the upper end of “serious” for the following reasons:

**First Complaint**

- (1) As mentioned in the Decision, the First Complaint which concerned the Respondent failed or neglected to observe, maintain, or otherwise apply professional standards in respect of the assembly of audit workpaper files, maintenance of the Practice’s system of quality control and performance of the audits of the financial statements of Client D and Client K, was proved.
- (2) The Respondent contended that most of the deficiencies concerning the First Complaint were resulting from the lack of resources and evaluation between costs and benefits in running a professional business. We did not agree.
- (3) The Respondent was the only person ensuring the quality control of her practice. The Respondent’s various deficiencies in complying with the professional standards showed that the Respondent lacked the competence and skill expected of an auditor. Also, the response of the Respondent to those deficiencies indicated a lack of basic understanding of the role as an auditor. By providing bookkeeping services to her audit clients, the Respondent did not assess whether there would be any self-review risk and therefore independence issue. All the above tended to suggest a really concern as to whether the Respondent was capable of practising as an auditor.
- (4) We accepted that the First Complaint did not involve any integrity issue and no evidence to show that the Respondent had received any financial gain from third parties due to her breach or violation.
- (5) But the deficiencies in Respondent’s audit work in relation to private company or small and medium sized entities undermined the public’s expectation on practising accountants and corporate to discharge their duties and carry out their work to the highest standards of probity, independence and competence. The price to be paid by the entire accountancy profession is very high if public confidence is shaken. It is important that public confidence in the accountancy profession is maintained and that any sanctions imposed by the Disciplinary Committee should also act as

deterrence to others that non-compliance by accountancy professionals to the high standards expected of them would be viewed seriously and would exact suitably severe sanctions.

### **Second Complaint**

- (6) The Second Complaint concerned with the Institute, while handling the First Complaint, found that the Respondent had failed to notify the Registrar of a change in the address of its registered office in accordance with section 31 of PAO; failure to comply of which is a criminal offence and therefore, the Respondent was guilty of dishonourable conduct under section 34(1)(a)(x) of PAO. We found the Second Complaint was proved.
  - (7) In the substantive hearing, parties agreed the Institute's record as of 5 October 2021 indicated that the registered office of the Practice was the Registered Office, not the New Address.
  - (8) We agreed with the Complainants that the Second Complaint was serious because if this matter is brought to court, the Respondent would have been convicted and bring disrepute to the profession.
  - (9) The argument put by the Respondent did not cast any doubt on the level of seriousness concerning the Second Complaint. The Respondent submitted she had made changes of address to Companies Registry and Business Registration Department in April 2021, also informed her client(s) about the change in the same month by email; in addition, she operated another company to provide secretarial services so as to allow her client to contact her firm easily; and relevant information in the record of the Accounting and Financial Reporting Council ("AFRC") for the change of registered office and contact details had been updated. Therefore, the Respondent claimed adequate communication was maintained between her client, former client with her and her firm. But the Respondent did not adduce any email correspondence nor documentary evidence to support about her claim.
  - (10) This Disciplinary Committee rejected the Respondent's argument because the importance of a registered office does not only provide a means for the public to contact an auditor, especially the Respondent's former clients, but also to communicate with the Institute. Also, the response of the Respondent indicated a lack of basic understanding of her duty as an auditor under the law and also ignored the possibility of any self-review risk and therefore independence issue. Again, all the above tended to suggest a really concern as to whether the Respondent was capable of practising as an auditor.
11. From the above, this Disciplinary Committee accepted the totality of the complaints against the Respondent before taking into account of any aggravating factor, put the seriousness of the complaints to the upper end of "serious". Under section 6 of the Guideline, this Disciplinary Committee opined that the appropriate sanctions based on the case severity before considering other factors should be a public reprimand; financial penalty; and/or cancellation of practising certificate and not reissued up to 1 year; an/or temporary removal from the register; and/or payment of costs and incidentals.

**(iii) Precedents submitted by the Complainants**

12. To assist the Disciplinary Committee in exercising its discretion, the Complainants have identified two previous decisions with similar features to the current case, namely, Proceedings No. D-19-1549P Chiang Sin Mei, Cindy and D-19-1526C Chung Chi Hung. The Complainants submitted that cancellation of practising certificate is a norm in cases concerning a lack of competence and due care.
13. The Disciplinary Committee noted these precedents would not be binding to our decision in sanction and costs and each case has specific facts. And previous decisions as to sanctions imposed are of reference value only. The committee has a margin of discretion in deciding the appropriate sanctions to maintain the standards of the profession, see *Registrar of the Hong Kong Institute of Certified Public Accountants v Leung Kam Man Victor* (CACV37/2016, unreported judgment on 17 January 2017).

**Proceedings No. D-19-1549P Chiang Sin Mei, Cindy**

14. Proceedings No. D-19-1549P Chiang Sin Mei, Cindy case concerned two complaints, the first one was that the respondent was selected for a practice review but in the course of two years, the respondent was continuously uncooperative and disregarded the correspondence sent from the Institute with respect to the practice review, including a statutory direction of the Practice Review Committee requiring the respondent to comply but the respondent ignored that. As a result, the practice review could not take place.
15. The second complaint against the respondent in Chiang Sin Mei, Cindy case was that the respondent had failed to maintain a valid registered office address as required under section 31(1) of PAO. In the course of the disciplinary proceedings, the respondent in Chiang Sin Mei, Cindy case was non-responsive and had ignored the directions of the disciplinary committee. The complaints against the respondent were found to be proved without a substantive hearing. The disciplinary committee in passing the sanctions noted that the respondent's refusal to participate in the proceedings and ignored all correspondence from the Institute and in the disciplinary proceedings and ordered that the respondent be reprimanded, her name be removed from the register of CPA for three years; her practising certificate be cancelled and the respondent to pay the costs.

**Proceedings No. D-19-1526C Chung Chi Hung**

16. The respondent in Chung Chi Hung case was the engaging director of the audit engagement of five companies, he faced one complaint that failing or neglecting to observe, maintain or otherwise apply professional standards in respect of the audit of the Companies' financial statements for the year/period ended 31 December 2017. Although his violations of various professional standards were not entirely the same as the Respondent herein, the multiple breaches indicated that the respondent in Chung Chi Hung case failed to carry out the audit engagements with the level of professional competence and due care expected of a professional accountant, in breach of sections 100.5(c) and 130 of the Code of Ethics for Professional Accountants.
17. The respondent in Chung Chi Hung case had been fully cooperative with the Institute and admitted the complaint against him. The respondent had deregistered his practice and voluntarily ceased to be a practising certificate holder. The disciplinary committee ordered that the respondent be reprimanded, no practising certificate should be issued to him for 12 months and that the respondent paid the costs of the complainant and the disciplinary committee.

### **Discussion about previous decisions**

18. The Respondent in the present case contended the respondent in Proceedings No. D-19-1549P Chiang Sin Mei, Cindy case was running a full-time practice in “her own name” which was distinguished from the fact of the Second Complaint herein. We disagreed. This was because regardless of the operation mode of the practice, section 31 of PAO applied to both the Respondent in the present case and also the respondent in Chiang Sin Mei, Cindy case.
19. This Disciplinary Committee noted that Chung Chi Hung case concerned the multiple breach of various professional standards and we agreed with the Complainants that the facts of the present case were more serious than those in Chung Chi Hung case and the conduct of the respondent in that case was different from the Respondent in the present case. And the committee in Chiang Sin Mei, Cindy case considered the conduct of non-cooperative respondent in passing the sanctions also had reference value to this Disciplinary Committee.

### **(iv) Aggravating factors**

20. This Disciplinary Committee noted the non-responsive and non-compliance conduct of the Respondent throughout the investigation and the whole disciplinary proceedings.
21. As mentioned in the Decision, the Respondent not only ignored several requests to update her registered office or to get in touch with the Institute’s Compliance Department during the investigation, but also not engaged in communication with either the Complainants or the Disciplinary Committee. In addition, the Respondent also failed to comply with the Procedural Timetable and directions of the Disciplinary Committee of the Respondent in numerous occasions despite of the facts that numerous posts, registered posts, emails and phone calls were directed to the Respondent based on contact information provided by the Respondent.
22. The Respondent’s refusal to participate in the proceedings and ignored all correspondence from the Institute and in the disciplinary proceedings caused the legal representative of the Complainants made an application under Rule 36 of the DCPR on 15 June 2022, asking the Committee to exercise the discretion to determine all Complaints and to dispense with the oral hearing. And the Respondent only requested for oral hearing at the last minute without providing any information as to her responses to the allegation etc.
23. During the substantive hearing, the Respondent even used “misunderstanding of the direction” as the reason to support her late application of submitting fresh evidence. As mentioned in the Decision, the Disciplinary Committee did not accept the Respondent’s reason and found that from the history of proceedings and correspondences, the Respondent was well informed with relevant procedural timetable and directions and therefore, she should know the submission deadline of evidence and her case.
24. This Disciplinary Committee also found the representation of the Respondent in her late application for submission of fresh evidence not credible. The Respondent claimed she had sent Form 2022 to the Institute. After this Disciplinary Committee discovered Form 2022 tendered by the Respondent was filled with clear blue ball pen marking and queried if it was the original copy indeed. The Respondent changed her version and admitted Form 2022 was never sent out to the Institute. As a result, the Respondent withdrew her application to tender Form 2022 as evidence and claimed she would produce it for mitigation purpose.

25. After the substantive hearing, the Respondent did not comply with the Direction of this Disciplinary Committee and did not file any submission on sanctions and costs by the Respondent's Submission Deadline (i.e. 7 July 2023) despite of the Decision (with the Direction) was already sent to the Respondent on 12 May 2023 by post and email based on contact information provided by the Respondent. The Clerk of this Disciplinary Committee then sent reminder to the Respondent by post and email on 9 June 2023, also by email again on 3 July 2023 and left voice message to the Respondent's mobile phone on 7 July 2023 (i.e. the Respondent's Submission Deadline) after failing to reach her by phone on the same day.
26. It was not until three days after the Respondent's Submission Deadline, the Respondent approached the Clerk to the Disciplinary Committee by phone and claimed that she had misread the Respondent's Submission Deadline as "17 July 2023" instead of "7 July 2023", the Respondent also claimed that she would try her best to submit her submission on the same day. Again, no submission was filed by the Respondent at all. From then, nothing was heard from the Respondent.
27. This Disciplinary Committee noted the Respondent did not file her submission on sanctions and costs and on 14 July 2023, the Chairman directed to extend the Respondent's Submission Deadline to on or before 16:30 hours on 21 July 2023, failing which this Committee would proceed to determine the sanctions and costs to be imposed in the absence of the Respondent's submission unless with the leave of the Chairman or this Committee ("**Extended Deadline**"). However, the Respondent still failed to comply with the Extended Deadline, she filed her submission by email and was in more than half an hour late without any explanation.
28. This Disciplinary Committee agreed with the Complainants that the aforesaid non-responsive and non-compliance conduct of the Respondent during the investigation fell within the aggravating factors listed in paragraph 7.7(a) of the Guideline (i.e., failure to cooperate with the investigation); and those happened during the course of the disciplinary proceedings was similar to the aggravating factors listed in paragraph 7.7(d) of the Guideline (i.e. failure to comply with relevant direction(s) from the Institute, other regulatory bodies and/or the Court). The Complainants submitted that such conduct of the Respondent certainly lengthened the disciplinary proceedings unnecessarily and the Disciplinary Committee was open to adjust the sanction upward.

(v) **Mitigation**

29. The Respondent first registered with the Institute in January 1999 and has no previous disciplinary record. And she relied on the following mitigation factors, in gist:
  - (a) she is aged 55;
  - (b) her cooperative attitude;
  - (c) her early admission on the complaints;
  - (d) she had already learnt a lesson;
  - (e) her firm is incorporated as a Company Limited by Shares under Companies Ordinance since 25 May 2010. Her only source of income was generated from the business of her firm and her secretarial company which had serious financial problems under the Covid 19 pandemic and social unrest;

- (f) she did not receive any financial benefit from third parties resulting from her breach or violation;
- (g) she took steps to make sure the breach not to reoccur and was ready to source IT solution and promised to recruit staff to assist. However, she could not determine to invest money to do so until the outcome of the complaints was finalised;
- (h) she had already filed relevant form to the Companies Registry and notified the Business Registration Department for the change of registered office in April 2021;
- (i) the relevant information under AFRC's records for the change of registered office and contact details had been updated. In the substantive hearing, the Respondent also submitted that the change of registered office to Institute was not a long delay.
- (j) she had notified all her clients by emails for the change of her business address in April 2021 and had operated another company to provide secretarial services to her client.

### **(C) ANALYSIS**

30. In considering the proper order to be made in this case, the Disciplinary Committee has had regard to all the aforesaid matters, including the particulars in support of the Complaints and the serious nature of the Complaints, all circumstances of this case, the mitigating factors as well as the non-responsive and non-compliance conduct of the Respondent, also previous decisions (and we understood it is not binding to us), this Disciplinary Committee opined that the sanctions should be adjusted upward:
- (1) In the present Complaints, the Respondent's multiple breach of various professional standards and her response to these deficiencies during the disciplinary proceedings indicated the lack of competency and due care, causing a real concern to her capability of practising as an auditor. Also, the deficiencies in Respondent's audit work undermined the public's expectation to practising accountants and corporate to discharge their duties and carry out their work to the highest standards of probity, independence and competence and it was important to maintain public confidence in the accountancy profession and sanctions imposed by the Disciplinary Committee should also act as deterrence to others that non-compliance by accountancy professionals to the high standards expected of them would be viewed seriously and would exact suitably severe sanctions.
  - (2) Regarding to First Complaint, there was no evidence to support the Respondent had taken any appropriate remedial steps promptly once the breach was identified. Also, the Respondent did not demonstrate she had taken any appropriate steps to stop or prevent the breaches. It was witnessed in her submission that she could not determine to invest money to do so until the outcome of the complaints was finalised.
  - (3) Also, we had no hesitation to find that the non-responsive and non-compliance conduct of the Respondent from the investigation up to the course of the disciplinary proceedings lengthened the proceedings unnecessarily. And we rejected the Respondent's submission that her conduct amounted to any early admission of guilt or as cooperative.

- (4) Considering all the aforesaid matters, we agreed with the Complainants that cancellation of practising certificate and not to be issued for at least 24 months and the removal from the register for at least 24 months were reasonable and appropriate sanctions in the circumstances of this case.
  - (5) Though the Respondent submitted her firm and her secretarial service company faced financial difficulty and these companies were her only source of income, the Respondent did not adduce any evidence in support. Having said that, we considered all mitigating factors in favour of the Respondent including her clear disciplinary record, we decided not to impose any order of financial penalty against the Respondent. And it was understood that the Complainants would not ask for such order.
31. Regarding to the costs, the Disciplinary Committee is satisfied that the costs and expenses set out in the Statement of Costs dated 9 June 2023 in the total sum of HK\$101,446 were reasonably and necessarily incurred. The Disciplinary Committee accepted the Complainants' submission that this relatively high costs were mostly attributed to the uncooperative attitude of the Respondent and ought to be borne by the Respondent.
  32. The Respondent submitted that she had no objection to the costs and expenses submitted by the Complainants.

**(D) ORDER**

33. The Committee ORDERS that:

- (1) the Respondent be reprimanded under Section 35(1)(b) of the PAO;
- (2) the name of the Respondent be removed from the register of certified public accountants for two (2) years under section 35(1)(a) of the PAO and it shall take effect on the 42<sup>nd</sup> day from the date of this order;
- (3) the practising certificate issued to the Respondent be cancelled under Section 35(1)(da) of the PAO and shall not be issued to the Respondent for 24 months under section 35(1)(db) of the PAO and it shall take effect on the 42<sup>nd</sup> day from the date of this order;
- (4) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainants and the costs of the Clerk to the Disciplinary Committee in the total sum of HK\$101,446 (being the total of the Complainants' costs of HK\$84,873 and the Clerk to the Disciplinary Committee's costs of HK\$16,573) under Section 35(1)(iii) of the PAO.

Dated: 11th day of October 2023

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Ms. LAU, Wan Ching  
Chairman

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Mr. CHOI, Wai Wing  
Member

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Mr. LEUNG, Ka Yau  
Member

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Mr. LI, Pak Ki  
Member