

IN THE MATTER OF

Complaints made under Section 34(1)(a) of the Professional Accountants Ordinance (Cap.50) (“the PAO”) and referred to the Disciplinary Committee under Section 33(3) of the PAO

BETWEEN

The Registrar of the Hong Kong Institute of Certified Public Accountants

COMPLAINANT

AND

1st Respondent

FIRST
RESPONDENT

2nd Respondent

SECOND
RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants (“the Institute”)

Members:

REASONS FOR DECISION

1. This is a complaint made by the Complainant against the Respondents, both certified public accountants (practising). Section 34(1)(a)(vi) of the PAO applied to the Respondents.
2. The particulars of the Complaint as set out in a letter dated 2 May 2013 (“the Complaint”) from the Registrar of the Institute to the Council of the Institute for consideration of the Complaint for referral to the Disciplinary Panels, are as follows:-
 - (1) The Institute received a letter dated 6 June 2012 from the Official Receiver (“OR”), lodging a complaint against the Respondents who are of a CPA firm (“CPA Firm”), alleging that they had committed serious misconduct as joint and several liquidators of a private company in liquidation (“Company”).

- (2) The Court of First Instance, upon application by the OR, removed the Respondents as liquidators in May 2012, as they failed to comply with a number of provisions / rules set out in the Companies Ordinance ("Ordinance") and the Companies (Winding-up) Rules ("Rules").

Professional Standards

- (3) Statement 1.200 Professional Ethics - Explanatory Foreword (Revised April 1999 with effect from May 1999)

"...

2. A member should carry out his professional work with a proper regard for the technical and professional standards expected of him as a member and should not undertake or continue professional work which he is not himself competent to perform unless he obtains such advice and assistance as will enable him competently to carry out his task.

3. A member should conduct himself with courtesy and consideration towards all with whom he comes into contact in the course of his professional work.

4. A member should follow the ethical guidance of the Society and in circumstances not provided for by that guidance should conduct himself in a manner consistent with the good reputation of the profession and the Society."

- (4) The Fundamental Principles are set out in paragraphs 100.4(c) and 100.4(e) of the Code of Ethics for Professional Accountants (Effective on 30 June 2006) ("Code") and elaborated in sections 130 and 150 of the Code:

Paragraph 100.4(c) - "Professional Competence and Due Care

A professional accountant has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques... "

Paragraph 100.4(e) - "Professional Behaviour

A professional accountant should comply with relevant laws and regulations and should avoid any action that discredits the profession."

- (5) The same Fundamental Principles are set out in paragraphs 100.5(c) and 100.5(e) of the revised Code (Effective on 1 January 2011) and elaborated in sections 130 and 150 of the Code.

The Complaints

- (6) **First Complaint**
Section 34(1)(a)(viii) of the PAO applies to the Respondents in that they were guilty of professional misconduct as evidenced by their failure to comply with the relevant provisions of the Ordinance and the Rules and to conduct the liquidation with due care and competence, resulting in their being removed by the Court as liquidators and ordered to pay the penalty interest under s202(2) of the Ordinance.
- (7) **Second Complaint (Alternative to the 1st Complaint)**
Section 34(1)(a)(vi) of the PAO applies to the Respondents in that they failed or neglected to observe, maintain or otherwise apply professional standards, namely, Statement 1.200 Professional Ethics - Explanatory Foreword (Revised April 1999 with effect from May 1999), paragraphs 100.4(c) and 100.4(e) of the Code of Ethics for Professional Accountants (Effective on 30 June 2006) and elaborated in sections 130 and 150 of the Code, and paragraphs 100.5(c) and 100.5(e) of the revised Code (Effective on 1 January 2011) and elaborated in sections 130 and 150 of the Code, as evidenced by their failure to comply with the relevant provisions of the Ordinance and the Rules and to conduct the liquidation with due care and competence, resulting in their being removed by the Court as liquidators and ordered to pay the penalty interest under s202(2) of the Ordinance.

Facts and Circumstances leading to the Complaints

- (8) The Respondents were appointed as the Company's provisional liquidators in April 2003 and joint and several liquidators in May 2004.
- (9) Upon examination of the Company's statement of accounts, the OR discovered that the Respondents were not carrying out the liquidation work properly in accordance with the Ordinance and Rules as they failed to:
- a) pay into the Company Liquidation Account ("CLA") various receipts collected in the total sum of \$88,790.95 during 1 April 2004 to 31 March 2006;
 - b) submit the liquidators' accounts since 1 April 2006; -
 - c) renew the security bond of \$250,000 after its expiry on 5 May 2008; and
 - d) take follow up actions and furnish documents, including audit certificates duly signed by the Committee of Inspection, requested by the OR since May 2010 (following an audit inspection for the statement of accounts for the periods from 1 April 2004 to 31 March 2006 conducted by the OR Office)
- (10) Despite the fact that the OR repeatedly requested and reminded the Respondents to comply with the above requests and rectify any breaches of the Ordinance or Rules, they repeatedly fail to respond. Below is a summary of dates that the OR first requested the Respondents to rectify the various breaches:

- a) 9 October 2006 - to furnish the outstanding liquidators' statement of accounts
 - b) 20 March 2007 - to remit the monies to the CLA and explain why it was not done so
 - c) 17 February 2009 - to renew the liquidators' bond
 - d) 28 May 2010 - to take follow up actions and furnish documents requested
- (11) Despite numerous reminders sent to the Respondents, a demand for substantive reply on 10 December 2009 and a final demand on 9 November 2011, the Respondents still did not reply to the OR except for two interim replies on 7 May 2008 and 20 July 2009 from Fung informing the OR that the information requested would be furnished.
- (12) In light of the above, the OR took out an application in December 2011 to remove the Respondents as liquidators. Fung then submitted to court details about the monies not being paid into the CLA and the outstanding liquidators' statements of accounts. The OR noted that the Respondents had not complied with the Ordinance as follows:
- a) the monies collected of \$88,790.95 were paid into a separate bank account with HSBC (in the name of the Company) between August 2004 and December 2005, instead of the CLA, for paying the Company's liquidation expenses such as storage, transportation and solicitors' fees;
 - b) total amount of solicitors' fees paid was \$43,000, but the appointment of solicitors was not sanctioned by court contrary to section 199(1)(c) of the Ordinance and the fees were not proved and taxed contrary to rule 179(2) of the Rules; and
 - c) certificate of audit of the cash book by the committee of inspection was not submitted to OR contrary to rule 62 of the Rules.
- (13) The OR also noted that the Respondents had realised certain assets of the Company, received certain proof of debts and paid a total of \$460,500.71 into the CLA. However no dividend was declared.
- (14) The Court of First Instance ordered the Respondents be removed as the Company's liquidators in May 2012 and to pay interest at 20% per annum as prescribed under the Companies Ordinance due to their failure to pay the money required to be paid into the CLA.
5. A Disciplinary Committee (“DC”) was constituted to deal with the Complaints. The Notice of Commencement of Proceedings was issued to the parties on 4 November 2013.
6. On 28 November 2013, the DC received a letter from the parties jointly applied to the DC to dispense the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules. Both Respondents admitted the Second Complaint against them. The parties also proposed that the first complaint (which is not admitted) will remain on the Institute's record and is

not to be proceeded without an order from either the Court of First Instance or the Court of Appeal.

7. The DC agreed with the proposals made by the Parties and directed the parties to make submissions on sanctions and costs and that the DC would not hold a hearing on sanctions and costs unless otherwise requested by the parties.
8. Although the DC agreed to find the Respondents guilty of a less serious complaint, i.e. failing or neglecting to observe, maintain or otherwise apply professional standards, the DC is of the view that the present case is the worst type under this category. On the basis of the factual findings as set out in paragraphs 2(8)-(14) above, the Respondents have failed in observing the Ordinance and the Rules since 2004 and despite the repeated requests of the OR, kept breaching the same for 8 years until their being removed by the Court of First Instance as the Company's liquidators in 2012. Such continuous breaches have adversely affected the legitimate interests of the creditors and the shareholders of the Company, brought discredit upon the Respondents and the Institute, and undermined the public confidence on the entire accountancy profession. Therefore, the sanction to be made in this case must reflect the seriousness of the case and bear deterrent effect on other accountancy professionals.
9. In considering the proper order to be made in this case, the DC has had regard all the aforesaid matters, including the evidence in support of the Complaints, the Respondents' personal circumstances, and the submissions made by the Complainant and the Respondents. Normally if the evidence adduced at the proceedings does not reveal any dishonest conduct on the part of the Respondents, financial penalty may be the appropriate sanction. However, considering the continuance of the Respondents' breaches and their neglect of the OR's requests, the DC is of the view that financial penalty is insufficient to address the seriousness of the present case. S.35(1)(db) of the PAO provides that the Disciplinary Committee may, in its discretion, make disciplinary order not to issue to the Respondents practising certificates for such period as the Disciplinary Committee may think fit. The DC came to the conclusion that such discretion should be exercised.
10. The DC orders that:-
 - 1) the practising certificates shall not be issued to the First and Second Respondents for a period of 12 months under section 35(1)(db) of the PAO. It shall take effect on the 40th day from the date of this order;

- 2) the First and Second Respondent each pay a financial penalty of HK\$50,000 under section 35(1)(c) of the PAO; and
- 3) the First and Second Respondents pay the costs and expenses of and incidental to the proceedings of HK\$23,441 under section 35(1). The said costs and expenses shall be borne equally between the Respondents.

All payments should be settled by the Respondents on or before the 40th day from the date of this order.

Dated the 24th day of March 2014

IN THE MATTER OF

Complaints made under Section 34(1)(a) of the Professional Accountants Ordinance (Cap.50) (“the PAO”) and referred to the Disciplinary Committee under Section 33(3) of the PAO

BETWEEN

The Registrar of the Hong Kong Institute of
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COMPLAINANT

AND

1st Respondent

FIRST
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2nd Respondent

SECOND
RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants (“the Institute”)

Members:

ORDER

Upon reading the complaint against the 1st Respondent and the 2nd Respondent, both certified public accountants (practising), as set out in a letter from the Registrar of the Hong Kong Institute of Certified Public Accountants (“the Complainant”) dated 2 May 2013 and the relevant documents, the Disciplinary Committee is satisfied by the admission of the Respondents and evidence adduced before it that the following complaint is proved:

Section 34(1)(a)(vi) of the PAO applies to the Respondents in that they failed or neglected to observe, maintain or otherwise apply professional standards, namely, Statement 1.200 Professional Ethics - Explanatory Foreword (Revised April 1999 with effect from May 1999), paragraphs 100.4(c) and 100.4(e) of the Code of Ethics for Professional Accountants (Effective on 30 June 2006) and elaborated in sections 130 and 150 of the Code, and paragraphs 100.5(c) and 100.5(e) of the revised Code (Effective on 1 January 2011) and elaborated in sections 130 and 150 of the Code, as evidenced by their failure to comply with the relevant provisions of the Ordinance and the Rules and to conduct the liquidation with due care and competence, resulting in their being removed by the Court as liquidators and ordered to pay the penalty interest under s202(2) of the Ordinance.

The Disciplinary Committee ORDERS that:-

- 1) the practising certificates shall not be issued to the First and Second Respondents for a period of 12 months under section 35(1)(db) of the PAO. It shall take effect on the 40th day from the date of this order;
- 2) the First and Second Respondent each pay a financial penalty of HK\$50,000 under section 35(1)(c) of the PAO; and
- 3) the First and Second Respondents pay the costs and expenses of and incidental to the proceedings of HK\$23,441 under section 35(1). The said costs and expenses shall be borne equally between the Respondents.

All payments should be settled by the Respondents on or before the 40th day from the date of this order.

Dated the 24th day of March 2014