

IN THE MATTER OF

A Complaint made under section 34(1)(a) and section 34(1A) of the Professional Accountants Ordinance (Cap. 50) (“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

The Respondent

RESPONDENT

Members:

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**REASONS FOR DECISION**

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1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (“the Institute”) as Complainant under section 34(1)(a)(vi) of the PAO against the Respondent, who is a certified public accountant (practising).

Background and the Complaints

2. The particulars of the Complaints were set out in a letter dated 9 July 2013 (“the Complaints”) from the Registrar of the Institute to the Council of the Institute for consideration of the Complaints for referral to the Disciplinary Panels.
3. By a signed Confirmation dated 25 March 2014, the Respondent admitted the Complaints against him. He did not dispute the facts as set out in the Complaints. He agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
4. The facts are as follows:-

***Background***

- a) The Institute received a complaint on 25 May 2012 alleging that a CPA firm (“the Firm”) committed improprieties in the audits of a number of

companies, including Company B (“Company B”). The Respondent is the sole proprietor of the Firm.

- b) Upon investigation, the Institute found evidence showing that the Respondent had :
- i. wrongfully acceded to the client’s request to issue an unmodified audit opinion on financial statements that were known to contain a material error; and
  - ii. failed to evaluate whether some related-party relationships and transactions of Company B were appropriately disclosed in accordance with the applicable financial reporting framework.

***Relevant Provisions of the PAO***

- c) Section 34(1)(a)(vi) of the PAO provides that a disciplinary complaint may be made against any certified public accountant for having failed or neglected to observe, maintain or otherwise apply a professional standard.

***Applicable Professional Standards***

- d) Section 110 “Integrity” of the Code of Ethics for Professional Accountants (“the Code”) states that:

*“110.2 A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the professional accountant believes that the information:*

- (a) Contains a materially false or misleading statement;*
- (b) Contains statements or information furnished recklessly; or*
- (c) Omits or obscures information required”*

- e) Section 120 “Objectivity” of the Code states that:

*“120.1 The principle of objectivity imposes an obligation on all professional accountants not to compromise their professional or business judgment because of bias, conflict of interest or the undue influence of others.*

*120.2 A professional accountant may be exposed to situations that may impair objectivity. It is impracticable to define and prescribe all such situations. A professional accountant shall not perform a professional service if a circumstance or relationship biases or unduly influences the accountant’s professional judgment with respect to that service.”*

- f) Paragraph 25 of Hong Kong Standard on Auditing 550 “Related Parties” states that:

*“25. In forming an opinion on the financial statements in accordance with HKSA 700, the auditor shall evaluate:*

*(a) Whether the identified related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework; and ...”*

***1<sup>st</sup> Complaint***

- g) Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply professional standards, namely, section 110 “Integrity” and section 120 “Objectivity” of the Code, when he wrongfully acceded to his client’s request to issue an unmodified audit opinion on financial statements that were known to contain a material error in that trade receivables, which were settled shortly after 31 December 2011, were offset against bills payable in the audited financial statements for the year ended 31 December 2011 (“1<sup>st</sup> Complaint”).

***2<sup>nd</sup> Complaint***

- h) Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply a professional standard, namely, paragraph 25 of HK Standard on Auditing 550 “Related Parties”, when he failed to evaluate whether some related-party relationships and transactions of Company B were appropriately disclosed in accordance with the applicable financial reporting framework for the same audited financial statements as in the 1<sup>st</sup> Complaint (“2<sup>nd</sup> Complaint”).

***Facts regarding the 1<sup>st</sup> Complaint***

- i) The Respondent issued unmodified audit reports on 2 different sets of financial statements of Company B. One set of financial statements was in English and another one in Chinese.
- j) The relevant details in the audited balance sheet of the Chinese version (translated in English) and English version are extracted below:

<u>Chinese Version</u>	<u>31/12/2011</u>
	USD
<i>Accounts Receivable</i>	50,936
<i>Bills Payable</i>	9,036,165
<u>English Version</u>	<u>31/12/2011</u>
	USD
<i>Accounts Receivable</i>	3,843,648
<i>Bills Payable</i>	12,828,877

- k) In the auditor’s report on the Chinese financial statements, it is stated in Chinese that,

“我們乃按照香港會計師公會頒佈之《香港核數準則》進行審計工作，該等準則規定我們須遵守道德規定，并計劃及進行審核，以合理確定此等財務報表是否不存有任何重大不適當陳述。

...

我們認為，該等財務報表已根據香港財務報告準則真實而公平地反映 貴公司於 2011 年 12 月 31 日的財務狀況及截至該日止年度的利潤及現金流量，並已按照香港《公司條例》之披露規定妥善編製。”

(English translation) “We conducted our audit in accordance with Hong Kong Standards on Auditing issued by the Hong Kong Institute of Certified Public Accountants. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance as to whether the financial statements are free from material misstatements.

...

*In our opinion, the financial statements give a true and fair view of the state of the Company’s affairs as at 31 December 2011 and of its profit and cash flows for the year ended 31 December 2011 in accordance with the Hong Kong Financial Reporting Standards and have been properly prepared in accordance with the Hong Kong Companies Ordinance.”*

- 1) The Respondent explained (in a letter dated 2 September 2012) the differences in the figures presented in the audited balance sheet as follows:

*“(i) There were 3 bills payable total amounting to USD3,792,712 at the year end;*

*(ii) The 3 bills were relating to the sales directly to the client’s holding company in the same amount;*

*(iii) The 3 bills and the related accounts receivable were settled in January 2012 before our field audit began, and offset in the management accounts by the client accordingly;*

*(iv) The management accounts had been submitted to board of directors and also consolidated into group accounts, therefore, the client was very much unwilling to revise the management accounts, which might incur director’s angry;*

*(v) The company has no bank loans, and the offset has no effect on bank loans or banking facilities as the related bank has already got enough cash margin deposits;*

*(vi) Our audit staff found out that the offset was not appropriate for financial reporting purposes, and therefore we ignored the offset and made full disclosure and presentation;*

*(vii) As the client's financial staff insisted on their own figures and required a compromise, we provided second version of audit report for their internal purposes;*

*(viii) We will not do so in the future."*

- m) In response to the Institute's observations that he might have breached the Code of Ethics on integrity and objectivity in accommodating the client's inappropriate request, the Respondent represented that he would withdraw the 2011 audit report on the incorrect financial statements. He sent an email to Company B on 8 May 2013 requesting to withdraw the 2011 audit report on the Chinese financial statements.
- n) As was clear from the Respondent's explanation in his letter of 2 September 2012, he knew that when he issued an unmodified audit opinion on the Chinese version of Company B's financial statements, those financial statements contained a material error.
- o) He also compromised his objectivity and professional judgement in subjecting himself to the influence of client management when he issued the unmodified audit report on the incorrect Chinese version of financial statements.

***Facts regarding the 2<sup>nd</sup> Complaint***

- p) The Respondent failed to observe paragraph 25, Hong Kong Standard on Auditing 550 "Related Parties" in that when forming an opinion on Company B's financial statements in accordance with HKSA 700, the Respondent failed to evaluate whether the financial statements properly disclosed the outstanding balances receivable from the holding company of USD50,936 (in the Chinese version of audited financial statements) and USD3,843,648 (in the English version of audited financial statements) in accordance with paragraphs 18 and 19 of Hong Kong Accounting Standard 24 "Related Party Transactions".
- q) The Respondent explained that the sales were made directly to the holding company. However, in the audited accounts, the amount was disclosed as trade receivable, instead of "amount due from holding company".
- r) In response to the Institute's enquiries, the Respondent represented in a letter dated 10 May 2013 that:

*“... In view of Company B, the related party transaction should be reclassified and disclosed separately in financial statements. Due to our staff’s experience, we failed in that disclosure. We noticed it and amend it for 2012 audit. We would reclassify this or other related party transactions for 2012 audit.”*

Submissions on Sanctions

5. By a letter dated 3 July 2014 addressed to the Complainant and the Respondent, the Clerk to the Disciplinary Committee (“DC”), under the direction of the DC, informed the parties that they should make written submissions to the DC as to the sanctions and costs.
6. The Complainant and the Respondent have submitted their respective written submissions on sanctions and costs by letters dated 23 July 2014 and 28 July 2014 respectively. The Respondent has made further submissions by letter dated 10 October 2014. Whilst the aforesaid letter dated 10 October 2014 of the Respondent was received by the Clerk to the DC after the time for making submissions as to sanctions set out in the Procedural Timetable had lapsed, the DC allows such letter to be included as part of the Respondent’s submissions on sanctions and costs. No request for a hearing on sanctions and costs has been made by any of the parties.
7. Regarding the 1<sup>st</sup> Complaint, the Complainant in the aforesaid letter dated 23 July 2014, submitted that the 1<sup>st</sup> Complaint was a serious one as the Respondent was fully aware that the offset in the management account was inappropriate and he initially made full disclosure correctly in the audit report. It was upon the client’s insistence that the Respondent later issued another report with the incorrect setoff. Thus the Respondent must have known that the 2<sup>nd</sup> audit report contains a material error, nevertheless he issued it upon the insistence of the client.
8. The Complainant further submitted that the conduct of the Respondent was tantamount to making a deliberately false statement and thus was very serious. In this regard, the Complainant referred the DC to the principles in the English case of *Bolton v Law Society* [1994] 1 WLR 512 (at 518):-

*“... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension.”*

9. For the 2<sup>nd</sup> Complaint, the Complainant submitted that it is a less serious breach than the 1<sup>st</sup> Complaint. It is in the nature of a mistake or error.
10. The Respondent acknowledged the mistake in issuing two different versions of audited accounts but submitted that to some extent the impact and consequence might be minor. The Respondent has also invited the DC to consider a lenient treatment by reason of, amongst others, his health condition and the difficulties of the Firm.

#### Considerations of the DC

11. Whilst the *Bolton* case concerns a solicitor, the DC accepts that the principles in *Bolton*, as cited by the Complainant, apply to accountants as well. The DC further noted the statement of Sir Thomas Bingham MR (as he then was) at 518:

*“...there is, in some of these orders, a punitive element ... In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence ... The second purpose is the most fundamental to all: to maintain the reputation of the solicitor’s profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission.”* (underlining added)

12. There is no evidence before the DC that the Respondent’s conduct has caused loss or damage to any third party, but as the Complainant has submitted and which the DC agrees, the Respondent’s conduct is very serious and amounts to making a deliberate false statement, and calls into question the integrity, probity and trustworthiness of the Respondent as a professional accountant. In considering the sanctions, the DC bears in mind the importance of maintaining the reputation of the profession.
13. For the 2<sup>nd</sup> Complaint, the DC agrees that it is less serious when compared with the 1<sup>st</sup> Complaint.
14. The health condition of the Respondent and the difficulties of the Firm are not compelling mitigating factors, and the DC takes into account the admission of the Complaints by the Respondent at an early stage of the proceedings.

#### Costs

15. As regards the costs, the Complainant claimed costs and expenses of HK\$31,840 as per the Statement of Costs submitted. The Respondent did not dispute such sum as claimed by the Complainant. The DC allows such costs and expenses of the Complainant in full.

Conclusion

16. In considering the proper order to be made in this case, the DC has had regard to all the aforesaid matters, including the facts and particulars in support of the Complaints, the Respondent's personal circumstances, as well as the conduct of the Complainant and the Respondent throughout the proceedings.
17. The DC orders that:-
  - 1) in respect of the 1<sup>st</sup> Complaint, the name of the Respondent be removed from the register of certified public accountants for 10 months to take effect from 2 February 2015 under section 35(1)(a) of the PAO;
  - 2) in respect of the 2<sup>nd</sup> Complaint, the Respondent be reprimanded under section 35(1)(b) of the PAO and pay a penalty of HK\$18,000 under section 35(1)(c) of the PAO; and
  - 3) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$31,840 under section 35(1)(iii) of the PAO.

Dated the 12<sup>th</sup> day of December 2014