

IN THE MATTER OF

Complaints made under section 34(1)(a) of the Professional Accountants Ordinance (Cap. 50) (“PAO”)

BETWEEN

The Registrar of the Hong Kong
Institute of Certified Public
Accountants

COMPLAINANT

AND

The 1st Respondent
The 2nd Respondent

1st RESPONDENT
2nd RESPONDENT

Members:

REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (“**the Institute**”) as Complainant against the 1st Respondent, a certified public accountant (practising) and the 2nd Respondent, a corporate practice . Sections 34(1)(a)(vi) and 34(1A) of the PAO applied to the Respondents.
2. The particulars of the Complaint as set out in a letter dated 26 June 2014 (“**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 were as follows:-

BACKGROUND

- 1) Company S (the "**Company**") is listed on the Main Board of the Stock Exchange of Hong Kong Limited.
- 2) The audits of consolidated financial statements for the Company and its subsidiaries (the "**Group**") for the year ended 31 December 2008 ("**2008 Accounts**") and 31 December 2009 ("**2009 Accounts**") (collectively the "**Accounts**") were conducted by The 2nd Respondent.
- 3) The 1st Respondent, the managing director of the 2nd Respondent, issued the audit reports with an unmodified opinion on the 2008 Accounts and a

qualified opinion on 2009 Accounts regarding other matters. The said audit reports were respectively dated 16 March 2009 and 29 March 2010.

- 4) Note 3 to the 2008 Accounts and 2009 Accounts respectively stated that they were prepared in accordance with Hong Kong Financial Reporting Standards ("**HKFRS**") and the said audit reports stated that the audits of the Accounts were conducted in accordance with Hong Kong Standards on Auditing ("**HKSA**").

The Acquisition of Rui Sui

- 5) On 30 October 2008 ("**Acquisition Date**"), the Group acquired 51% equity interest ("**Acquisition**") of Jilin Province Rui Sui Kuang Ye Company Limited ("**Rui Sui**") at a consideration of RMB7.65 million (approximately HK\$8.6 million). Rui Sui assets comprised of exploration rights to an Iron Mine ("**IM**") and an exploration right to a Molybdenum Mine ("**MM**"), which had expired on 14 September 2008, but could be renewed.

Valuation of IM and MM at and after the Acquisition Date

- 6) At the Acquisition Date, the exploration right to IM was valued at HK\$6.5 million as stated in the 2008 Accounts. However, the exploration right to MM, having expired on 14 September 2008 and its right of renewal not identified or recognized, was recorded as "Nil".
- 7) Two months after the Acquisition Date, the Group appointed an independent valuer ("**Valuer A**") to value the exploration rights for IM. The IM was valued at HK\$880.7 million at 31 December 2008 based on the report of Valuer A dated 24 February 2009. There was an increase of HK\$874.2 million in the value of the exploration right to IM within two month after the Acquisition Date.
- 8) In 2009, the Group appointed another independent valuer ("**Valuer B**") to perform a valuation on the exploration rights for both IM and MM. The report of Valuer B dated 29 March 2010 stated that IM and MM were valued at HK\$3,263.0 million in aggregate at 31 December 2009, resulting in the increase in value of the exploration rights of the MM from a Nil value for the year ended 2008 to HK\$2,382.3 million for the year ended 2009.
- 9) The significant increase in the values of IM and MM gave rise to a significant revaluation surplus being recorded in the Accounts.
- 10) On 20 September 2010, the Financial Reporting Council ("**FRC**") received a complaint regarding, *inter alia*, the possible non compliance with accounting requirements in relation to the recognitions and measurement of the explorations rights of the IM & MM arising from the

Acquisition and their subsequent measurements in the 2008 & 2009 Accounts.

- 11) Having considered the information, the FRC, on 9 March 2011, decided to initiate an investigation and directed the Audit Investigation Board ("**AIB**"), in accordance with s.23(3)(b) of the FRC Ordinance, to investigate the possible auditing irregularity and the question of whether or not there was any irregularity in relation to the audits of the 2008 & 2009 Accounts in respect of the recognition and measurement of the exploration rights arising from the Acquisition and subsequent measurement in the 2008 & 2009 Accounts.
- 12) Further, on 21 July 2011, the FRC appointed the Financial Reporting Review Committee ("**FRRC**") to conduct an enquiry into whether or not there had been non-compliance in relation to
 - a. the recognition of the exploration right to the MM;
 - b. the determination of the respective fair values of the exploration rights to the IM and the MM at the Acquisition Date; and
 - c. the non-disclosure of the carrying amounts of each class of identifiable assets and liabilities immediately before the Acquisition Date

in the 2008 Accounts.

- 13) The FRRC completed its investigations and prepared a report dated 19 April 2012 which was adopted by the FRC on 3 May 2012, in accordance with s.47(3) of the FRC Ordinance, Cap 588 (the "**FRRC Report**").

The AIB Report and findings

- 14) On 4 December 2012, the FRC referred to the Institute a report of the AIB dated 14 November 2012 together with annexures ("**AIB Report**") to the Institute pursuant to section 9(f) of the FRC Ordinance (Cap.588). The AIB Report had been adopted by the FRC in accordance with s.35(3) of the FRC Ordinance.
- 15) The AIB Report agreed with the conclusions reached in the FRRC Report and concluded that there were issues of relevant non-compliance in relation to, among others, (i) the recognition of exploration right to MM; (ii) the determination of fair value of exploration right to IM and MM in the 2008 and 2009 Accounts; and (iii) the subsequent measurements of the IM and MM using the cost/valuation model after the Acquisition Date.

Recognition of Exploration Rights to MM in 2008

- 16) The AIB found that the 2008 Accounts did not identify and separately recognize the pre-emptive right in renewing the exploration right to MM at fair value at Acquisition Date in accordance with paragraph 36 of

HKFRS 3 *Business Combinations*. AIB considered that the 2nd Respondent should have at least, questioned whether Rui Sui had the exploration right to MM or whether Rui Sui was still conducting exploration work in MM which might indicate that Rui Sui has the exploration right, as such practice is not uncommon in the mining industry.

- 17) Accordingly, AIB considered that the 2nd Respondent had failed to
- (a) plan and perform the 2008 audit with an attitude of professional skepticism recognizing that circumstances may exist that cause the 2008 Accounts to be materially misstated in accordance with paragraphs 15 and 16 of HKSA 200 *Objective and General Principles Governing an Audit of Financial Statements*, and/or
 - (b) obtain sufficient appropriate audit evidence to identify the exploration rights to MM in 2008 at Acquisition Date in accordance with paragraph 2 of HKAS 500 *Audit Evidence*.

Determination of Fair Value of Exploration Rights to IM and MM

IM in 2008 and 2009 Accounts

- 18) The AIB found that the Company did not measure the exploration right to IM upon the completion of the initial accounting for the Acquisition when the fair value of the said exploration right became available. The Company should have measured the right at its fair value at the Acquisition Date or finalized the fair value of such right upon completion of the initial accounting for the Acquisition in accordance with paragraphs 61 and 62 of HKFRS 3.
- 19) The AIB considered that the 2nd Respondent should have issued an auditor's report with a modified opinion on the 2008 and 2009 Accounts in this respect in accordance with paragraphs 11 and 13 of HKSA 700 *The Independent Auditor's Report on a Complete Set of General Purpose Financial Statements* as, if the exploration rights to IM had been measured at fair value at the Acquisition Date, it would result in recognition of "negative goodwill" and a corresponding deferred tax liability in both the 2008 & 2009 Accounts.
- 20) Further, the significant increase in value of the exploration right to IM by HK\$874.2 million just two months after the Acquisition Date appeared to demonstrate that the exploration right to the IM had been purchased at a price significantly below its fair value. The auditor should have considered that the transaction appeared unusual and should have planned additional procedures to reduce any potential audit risks.

- 21) Accordingly, the AIB considered that the 2nd Respondent had also failed to plan and perform the 2008 audit with an attitude of professional skepticism recognising that circumstance may exist that cause the 2008 Accounts to be materially misstated in accordance with paragraph 15 and 16 of HKSA 200 *Objective and General Principles Governing an Audit of Financial Statements*.

MM in 2008 and 2009 Accounts

- 22) The AIB found that the 2008 Accounts did not identify and separately recognize the pre-emptive right in renewing the exploration right to MM at fair value at Acquisition Date in accordance with paragraph 36 of HKFRS 3 Business Combinations. If it had, it would result in the recognition of negative goodwill and additional intangible assets and a corresponding deferred tax liability in the 2008 Accounts.
- 23) AIB considered that the 2nd Respondent should have issued an auditors' report with modified opinion on the 2008 Accounts in accordance with paragraphs 11 and 13 of HKSA 700 *The Independent Auditor's Report on a Complete Set of General Purpose Financial Statements*.
- 24) In respect of the increase in the value of the explorations rights of MM by HK\$2,382.3 million during the year ended 31 December 2009, the 2nd Respondent had represented to the AIB that this was due to the successful renewal of the expired rights. However, AIB considered that the renewal should have alerted the 2nd Respondent that MM should have been separately identified and measured at fair value at Acquisition date and retrospective restatement should have been made in the 2009 Accounts to correct the error in the 2008 Accounts in accordance with paragraph 42 of HKAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors*.
- 25) Accordingly, AIB considered that the 2nd Respondent had failed to perform the 2009 Audit with an attitude of professional skepticism recognizing that circumstances may exist that cause the 2009 Accounts to be materially misstated in accordance with paragraphs 15 and 16 of HKAS 200 *Objective and General Principles Governing an Audit of Financial Statements*.

Subsequent measurements of the IM and MM using the cost/valuation model after the Acquisition Date

- 26) AIB and FRRC did not agree with the Company's use of a revaluation model rather than a cost model as its accounting policy to record the subsequent measurement of the explorations rights to the IM and MM. Since there was no active market for exploration rights AIB & FRCC

considered that, to comply with HKAS 38 Intangible Asset, the subsequent measurement of the exploration rights to IM and MM should be carried at cost (i.e. fair values of the exploration rights to the IM and MM at the Acquisition Date or finalized upon completion of initial accounting for the Acquisition) less accumulated amortization and any impairment losses instead of at valuation in 2008 and 2009.

27) Accordingly, AIB was of the view that the 2nd Respondent had failed to:

- (a) properly assess whether the revaluation model in HKAS 38 was appropriate for the Company's business and/or consistent with the industry practice as required in *paragraph 28 of HKSA 315 Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement* in the 2008 and 2009 Accounts; and
- (b) issue an auditor's report with a modified opinion on the 2008 and 2009 Accounts in this respect in accordance with paragraphs 11 and 13 of HKSA 700 *The Independent Auditor's Report on a Complete Set of General Purpose Financial Statements*.

SUMMARY OF PRINCIPAL ISSUES TO THE 1ST TO 5TH COMPLAINTS

28) The principal issues are explained in the AIB Report, which should be referred to for details. The issues and evidence will be further addressed in the Complainant's Case to be filed pursuant to the Disciplinary Committee Proceedings Rules.

29) In summary, the principal issues are:

- a. During the 2008 audit in respect of the recognition of exploration right to MM, the Respondents failed to obtain sufficient appropriate audit evidence to draw reasonable conclusion on which to base the audit opinion on the Accounts under paragraph 2 HKSA 500 *Audit Evidence*;
- b. During the audits of IM and MM in 2008 and 2009 in respect of the determination of fair values of exploration rights to IM and MM and their subsequent measurements, the Respondents failed to:
 - (i) plan and perform its audit with an attitude of professional skepticism under paragraphs 15 and 16 of HKSA 200 *Objective and General Principles Governing an Audit of Financial Statements*;
 - (ii) properly evaluated the conclusions drawn from the audit evidence obtained in forming its opinion as to whether the financial statements gave a true and fair view under paragraphs

11 and 13 of HKSA 700 *The Independent Auditor's Report on a Complete Set of General Purpose Financial Statements*; and

- (iii) properly assessed the appropriateness of the Company's selection and application of its accounting policy in relation to the exploration rights and meet the requirements of paragraph 28 of HKSA 315 *Understanding the Entity and its Environment and Assessing the Risks of Material Misstatement*.

PROFESSIONAL STANDARDS

30) HKSA 500 *Audit Evidence*

"2. *The auditor should obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.*"

31) HKSA 200 *Objective and General Principles Governing an Audit of Financial Statements*

"15. *The auditor shall plan and perform an audit with professional skepticism recognizing that circumstances may exist that cause the financial statements to be materially misstated.*

16. *An attitude of professional skepticism means the auditor makes a critical assessment, with a questioning mind, of the validity of audit evidence obtained and is alert to audit evidence that contradicts or brings into question the reliability of documents and responses to inquiries and other information obtained from management and those charged with governance. For example, an attitude of professional skepticism is necessary throughout the audit process for the auditor to reduce the risk of overlooking unusual circumstances, of over generalizing when drawing conclusions from audit observations, and of using faulty assumptions in determining the nature, timing and extent of the audit procedures and evaluating the results thereof. When making inquiries and performing other audit procedures, the auditor is not satisfied with less-than-persuasive audit evidence based on a belief that management and those charged with governance are honest and have integrity. Accordingly, representations from management are not a substitute for obtaining sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the auditor's opinion."*

32) HKSA 315 *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement*

"28. *The auditor should obtain an understanding of the entity's selection and application of accounting policies and consider whether they are appropriate for its business and consistent with*

the applicable financial reporting framework and accounting policies used in the relevant industry. The understanding encompasses the methods the entity uses to account for significant and unusual transactions; the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus; and changes in the entity's accounting policies. The auditor also identifies financial reporting standards and regulations that are new to the entity and considers when and how the entity will adopt such requirements. Where the entity has changed its selection of or method of applying a significant accounting policy, the auditor considers the reasons for the change and whether it is appropriate and consistent with the requirements of the applicable financial reporting framework."

33) HKSA 700 *The Independent Auditor's Report on a Complete Set of General Purpose Financial Statements*

"11. The auditor should evaluate the conclusions drawn from the audit evidence obtained as the basis for forming an opinion on the financial statements."

"13. Forming an opinion as to whether the financial statements give a true and fair view or are presented fairly, in all material respects, in accordance with the applicable financial reporting framework involves evaluating whether the financial statements have been prepared and presented in accordance with the specific requirements of the applicable financial reporting framework for particular classes of transactions, account balances and disclosures.... "

34) HKFRS 3 *Business Combinations*

"36. Before recognising a gain on a bargain purchase, the acquirer shall reassess whether it has correctly identified all of the assets acquired and all of the liabilities assumed and shall recognise any additional assets or liabilities that are identified in that review. The acquirer shall then review the procedures used to measure the amounts this HKFRS requires to be recognised at the acquisition date for all of the following:

- (a) the identifiable assets acquired and liabilities assumed;*
- (b) the non-controlling interest in the acquiree, if any;*
- (c) for a business combination achieved in stages, the acquirer's previously held equity interest in the acquiree; and*
- (d) the consideration transferred.*

The objective of the review is to ensure that the measurements appropriately reflect consideration of all available information as of the acquisition date."

61. *The initial accounting for a business combination involves identifying and determining the fair values to be assigned to the acquiree's identifiable assets, liabilities and contingent liabilities and the cost of the combination.*
62. *If the initial accounting for a business combination can be determined only provisionally by the end of the period in which the combination is effected because either the fair values to be assigned to the acquiree's identifiable assets, liabilities or contingent liabilities or the cost of the combination can be determined only provisionally, the acquirer shall account for the combination using those provisional values. The acquirer shall recognise any adjustments to those provisional values as a result of completing the initial accounting:*
 - (a) *within twelve months of the acquisition date; and*
 - (b) *from the acquisition date. Therefore:*
 - (i) *the carrying amount of an identifiable asset, liability or contingent liability that is recognised or adjusted as a result of completing the initial accounting shall be calculated as if its fair value at the acquisition date had been recognised from that date.*
 - (ii) *goodwill or any gain recognised in accordance with paragraph 56 shall be adjusted from the acquisition date by an amount equal to the adjustment to the fair value at the acquisition date of the identifiable asset, liability or contingent liability being recognised or adjusted.*
 - (iii) *comparative information presented for the periods before the initial accounting for the combination is complete shall be presented as if the initial accounting had been completed from the acquisition date.*

This includes any additional depreciation, amortisation or other profit or loss effect recognised as a result of completing the initial accounting.

35) HKAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors*

"42. Subject to paragraph 43, an entity shall correct material prior period errors retrospectively in the first set of financial statements authorized for issue after their discovery by:

- (a) restating the comparative amounts for the prior period(s) presented in which the error occurred; or*
- (b) if the error occurred before the earliest prior period presented, restating the opening balances of assets, liabilities and equity for the earliest prior period presented."*

36) HKAS 38 Intangible Assets

"8. An active market as a market in which all the following conditions exist:

- (a) the items traded in the market are homogeneous;*
- (b) willing buyers and sellers can normally be found at any time; and*
- (c) prices are available to the public."*

"72. An entity shall choose either the cost model in paragraph 74 or the revaluation model in paragraph 75 as its accounting policy. If an intangible asset is accounted for using the revaluation model, all the other assets in its class shall also be accounted for using the same model, unless there is no active market for those assets. "

75. After initial recognition, an intangible asset shall be carried at a revalued amount, being its fair value at the date of the revaluation less any subsequent accumulated amortisation and any subsequent accumulated impairment losses. For the purpose of revaluations under this Standard, fair value shall be determined by reference to an active market. Revaluations shall be made with such regularity that at the balance sheet date the carrying amount of the asset does not differ materially from its fair value.

78. It is uncommon for an active market with the characteristics described in paragraph 8 to exist (Or an intangible asset. although this may happen. For example, in some jurisdictions, an active market may exist for freely transferable taxi licences, fishing licences or production quotas. However, an active market cannot exist for brands, newspaper mastheads, music and film publishing rights, patents or trademarks, because each such asset is unique. Also, although intangible assets are bought and sold, contracts are negotiated between individual buyers and sellers, and transactions are relatively infrequent. For these reasons, the price paid for one asset may not provide sufficient evidence of the fair value of another. Moreover, prices are often not available to the public."

THE COMPLAINTS

1st Complaint

- 37) Section 34(1)(a)(vi) and section 34(1AA) of the PAO apply to the Respondents in that they have failed or neglected to observe, maintain or otherwise apply paragraph 2 of HKSA 500 *Audit Evidence* for failing to obtain sufficient appropriate audit evidence regarding the exploration right to the MM when auditing the 2008 Accounts.

2nd Complaint

- 38) Section 34(1)(a)(vi) and section 34(1AA) of the PAO apply to the Respondents in that they have failed or neglected to observe, maintain or otherwise apply paragraphs 15 and 16 of HKSA 200 *Objective and General Principles Governing an Audit of Financial Statements* for their failure to plan and perform its audit of the 2008 Accounts with an attitude of professional skepticism regarding the fair value of the IM.

3rd Complaint

- 39) Section 34(1)(a)(vi) and section 34(1AA) of the PAO apply to the Respondents in that they have failed or neglected to observe, maintain or otherwise apply paragraphs 15 and 16 of HKSA 200 *Objective and General Principles Governing an Audit of Financial Statements* for their failure to plan and perform their audit of the 2008 Accounts & 2009 Accounts with an attitude of professional skepticism regarding the status of the exploration right to the MM.

4th Complaint

- 40) Section 34(1)(a)(vi) and section 34(1AA) of the PAO apply to the Respondents in that they have failed or neglected to observe, maintain or otherwise apply paragraph 28 of HKSA 315 *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement* for their failure to properly assess whether the Company's use of the revaluation model as its accounting policy on the subsequent measurement of the IM and MM in the 2008 Accounts & 2009 Accounts was appropriate to the Company's business and/or consistent with the industry practice.

5th Complaint

- 41) Section 34(1)(a)(vi) and section 34(1AA) of the PAO apply to the Respondents in that they have failed or neglected to observe, maintain or otherwise apply paragraphs 11 and 13 of HKSA 700 *The Independent Auditor's Report on a Complete Set of General Purpose Financial Statements* as they had failed to issue an auditors' report with a modified opinion on the 2008 Accounts and the 2009 Accounts as regards the Company's treatment of the IM and MM.

THE PROCEEDINGS

3. The 1st and 2nd Respondents admitted the Complaints against them on 18 August 2014 and 5 August 2014 respectively. They did not dispute the facts as set out in the Complaints. They agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
4. By a letter dated 26 September 2014 addressed to the Complainant and the Respondents, 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 and that the DC would not hold a hearing on sanctions and costs unless otherwise requested by the parties.
5. By a letter dated 16 October 2014 from the Respondents and a letter dated 17 October 2014 from the Complainant, the parties have made submissions on sanctions and costs.

THE SANCTIONS

6. In arriving at the proper sanctions to be imposed on the Respondents, the Disciplinary Committee has had regard to the following facts and matters specific to this case which apply to both the 1st and 2nd Respondents unless otherwise stated :-
 - 1) the Complaints concern the audit deficiencies in relation to two mines owned by the audit client (i.e. the Company) who is a listed company and public interest is involved and affected;
 - 2) the Respondents made early admissions to the Complaints and have been co-operative with the Institute in the course of investigation;
 - 3) the Respondents’ clear disciplinary record;
 - 4) there was no allegation or finding of any fraud, dishonesty, illegal or immoral conduct by the Respondents;
 - 5) there was no allegation or finding of any financial loss or tangible prejudice suffered by any person consequent upon the Complaints;
 - 6) in the present case, the 1st and 2nd Respondents were found to have committed breaches in two consecutive audit years;
 - 7) the 1st Respondent will be re-designated from the position of managing director to a regular director of the 2nd Respondent and he confirms to take up further 20 hours professional training on top of the CPD requirement in the areas of audit and listing rules; and

- 8) in order to maintain the highest professional standards of the 2nd Respondent in providing audit and assurance services to listed companies, a Quality Control Department has been established so as to ensure the quality of audit works, in particular, the assessment of accounting standards and assessment of audit evidence in supporting the audit opinion.
7. In considering the proper order to be made in this case, the DC has had regard to all the aforesaid matters, including the particulars in support of the Complaints, the Respondents' personal circumstances, the parties' submissions, the cases referred to us (although each case must be decided upon its own particular facts) and the conduct of the Complainant and the Respondents throughout the proceedings.
8. In respect of the 1st and 2nd Respondents, the DC is of the view that the following sanctions are appropriate :-
 - 1) the 1st and 2nd Respondents be reprimanded under section 35(1)(b) of the POA;
 - 2) as a starting point, a penalty of HK\$30,000.00 should be imposed on each Respondent in respect of each Complaint but having regard to the mitigating factors in this case (in particular, the admission to the Complaints by the Respondents), the penalty shall be reduced to HK\$20,000.00 in respect of each Complaint and so each of the 1st and 2nd Respondents do pay a penalty of HK\$100,000.00 (namely, a penalty of HK\$20,000.00 in respect of each Complaint) under section 35(1)(c) of the PAO;

COSTS

9. Section 35 of the PAO empowers the DC to make orders as to costs :-

*“...the Disciplinary Committee may in any case-...
(iii) make such order as the Disciplinary Committee thinks fit with regard to the payment of costs and expenses of and incidental to the proceedings, whether of the Institute (including the costs and expenses of the Disciplinary Committee) or of any complainant or of the certified public accountant, any costs and expenses or penalty ordered to be paid may be recovered as a civil debt.”* (§ 68 of the Guidelines for the Chairman and the Committee on Administering the Disciplinary Committee Rules, Hong Kong Institute of Certified Public Accountants, March 2007 (“the Guidelines”)).
10. Under Section 35(1)(d)(ii) of the PAO, the DC may, in its discretion, make an order that certified public accountant *“where the disciplinary proceedings were instituted as a result of an investigation under the Financial Reporting Council Ordinance (Cap 588), pay to the FRC the sum the Disciplinary Committee considers appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the FRC”*.

11. In exercising its discretion to award costs and determine the extent to which costs should be recoverable, the DC bears in mind the relevant principles as enunciated in § 70 of the Guidelines :-

“(1) Save where there is good reason to do so otherwise, the Committee should award costs to the successful party in the proceedings;

*(3) The starting point in any award of costs should be the **actual costs** (i.e. indemnity costs) incurred by the successful party, subject to the Committee being satisfied that the actual costs were reasonably and necessarily incurred. The Committee may reduce the amount awarded to the extent it considers costs to have been incurred unnecessarily or extravagantly. In deciding what deduction is reasonable, the Committee may consider being guided by the practices of the courts in civil proceedings (which are complex). These are summarized in Annex 5.”*

12. The Complainant has provided a Statement of Costs dated 17 October 2014 totalling HK\$113,351.40. Of the costs set out in the aforesaid Statement of Costs, the sum of HK\$81,810.40 are the costs incurred by the Financial Reporting Council.

13. Having considered the Statement of Costs dated 17 October 2014, the DC is of the view that the sum of HK\$113,351.40 incurred was reasonably and necessarily incurred and the Respondents also have not made any challenge to the Statement of Costs submitted by the Complainant.

14. The DC orders that :-

- 1) the 1st and 2nd Respondents be reprimanded under section 35(1)(b) of the PAO;
- 2) each of the 1st and 2nd Respondents do pay a penalty of HK\$100,000.00 under section 35(1)(c) of the PAO; and
- 3) the Respondents do pay the costs and expenses of and incidental to the proceedings of the Complainant and the Financial Reporting Council in the total sum of HK\$113,351.40 under section 35(1)(ii) and section 35(1)(d)(ii) respectively of the PAO.

Dated the 22nd day of May 2015.