

IN THE MATTER OF

A Complaint made under Section 34(1)(a) and 34(1A) 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

Mr. Chow Ho Tung Anthony
Membership No. F03959

RESPONDENT

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

Members: Ms. Chan Jo Ying Bonnie (Chairman)
Ms. Hui Ming Ming Cindi
Ms. Chow Man Ling Irene
Mr. Yeung Chi Wai Edwin
Mr. Chu Yau Wing Jason

ORDER & REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (the "**Institute**") against Mr. CHOW Ho Tung Anthony, a certified public accountant (the "**Respondent**"). Section 34(1)(a)(vi) of the PAO applies to the Respondent.
2. The particulars of the Complaint as set out in a letter dated 5 January 2015 (the "**Complaint**") are as follows:-

BACKGROUND

- (1) This case involves 2 listed companies. The first one is China Sciences Conversational Power Ltd. ("CSCP") (currently known as Asia Energy Logistic Group), of which Abba Chan Tat-chee ("Chan") was appointed Chairman and executive director in October 2003, and subsequently acquired a majority of shares in 2004. Hon Ming-kong ("Hon") was appointed an executive director of CSCP in September 2004, and by June 2005 held about 29% of the shares in CSCP. In November 2004, Hon replaced Chan as Chairman of CSCP, and Chan remained as an executive director.

- (2) The Respondent was the Chief Financial Controller of CSCP from 2000 and responsible for its financial affairs. He was appointed an executive director of CSCP in February 2004. Working under the Respondent was Chan Kwai-fun, Cammie ("Cannie Chan"), who dealt with the daily accounting documents and was responsible for keeping accounting records.
- (3) The second listed company is China Conservational Power Holdings Ltd. ("CCPHL"), of which Hon started to acquire shares in February 2002, and became its executive director and Chairman in April 2002 and February 2003 respectively. In November 2004, Chan replaced Hon as Chairman of CCPHL, and Hon remained as an executive director.
- (4) Lai Kan (also known as Lai Lai-kan, Kan and Lai Kam Tung) ("Lai") was a salaried employee from July 2003 to May 2004 of Sharpo Solutions Limited ("Sharpo"), an indirectly wholly-owned BVI subsidiary of CSCP. After May 2004 she ceased to receive a salary, but maintained an office in the company. The Respondent and Chan were directors in Sharpo.
- (5) The Respondent, Hon and Lai were arrested in September 2005 and charged in February 2006 on an indictment consisting of 14 charges including (inter alia) conspiracy to steal and conspiracy to defraud relating to CSCP and CCPHL. Of the 14 charges, 10 were directed against the Respondent. The Respondent and Hon resigned from their positions in CSCP shortly after their arrests.
- (6) The trial took place in the District Court from April 2008 to June 2011 (DCCC 661/2006). Chan was named as a co-conspirator in some of the conspiracies to steal or defraud and testified as an accomplice at the trial. Cannie Chan gave evidence under immunity. At the end of the trial the Respondent was convicted of all 10 charges against him, and sentenced to 6 years' imprisonment – see Certificate of Conviction dated 6 September 2011, and Reasons for Sentence dated 12 July 2011. Hon and Lai were also convicted of all charges save in relation to one charge (Charge 14) against Hon alone.
- (7) The defendants appealed their conviction to the Court of Appeal in November and December 2013 (CACC 272/2011), and the Court of Appeal dismissed the appeals against conviction save in relation to one charge (Charge 10) against the Respondent and Hon. On sentencing, the Court of Appeal slightly reduced the Respondent's sentence from 6 years to 5 years and 4 months. The Court of Final Appeal rejected the defendants' application for leave to appeal in November 2014.
- (8) The end result is that the Respondent stands convicted of 9 charges involving conspiracy to steal, conspiracy to defraud, and publishing a false statement in a company's annual report. All were charges involving dishonesty.

The Relevant Legal Provisions

- (9) Sections 34(1)(a)(ii) and (x) of the Professional Accountants Ordinance, Cap. 50, Laws of Hong Kong ("PAO") provide that:-

"A complaint that –

(a) a certified public accountant –

.....

(ii) has been convicted in Hong Kong or elsewhere of any offence involving dishonesty;

.....

(x) was guilty of dishonourable conduct;

.....

shall be made to the Registrar who shall submit the complaint to Council which may, in its discretion but subject to section 32D(7), refer the complaint to the Disciplinary Panels."

Complaint 1

- (10) Section 34(1)(a)(ii) of the PAO applies to the Respondent in that he had been convicted of 9 charges involving conspiracy to steal, conspiracy to defraud, and publishing a false statement in a company's annual report, all being charges involving dishonesty.

Complaint 2 (alternative to Complaint 1 above)

- (11) Section 34(1)(a)(x) of the PAO applies to the Respondent in that he was guilty of dishonourable conduct by reason of his dishonest and/or fraudulent acts for which he had been convicted as referred to in Complaint 1 above.

Facts and Circumstances in support of the Complaints

- (12) The Respondent had initially been convicted of a total of 10 charges in DCCC 661/2006, which was reduced to 9 charges on appeal – viz. Charges 1, 3, 6, 7, 8, 9, 11, 12, and 13. Below is a description of the 9 charges, based on the findings and observations made by the court (in the Reasons for Verdict delivered from 20-22 June 2011), and by the Court of Appeal in CACV 272/2011.
- (13) Charge 1: conspiracy to steal a chose in action in the sum of \$1.5 million from CSCP in May 2004: The Respondent devised a scheme to provide liquidity to Chan who needed the money in May 2004. Sharpo was named as the purchaser of a consignment of telephone for \$3 million, of which a deposit of \$1.5 million was needed. The Respondent gave instructions to Carrie Chan to issue the cheque (payable to Sharpo) and the payment voucher, which was signed by the Respondent. For the cheque, as the matter was urgent and the Respondent was not in the office, Carrie Chan telephoned the Respondent to get instructions. The Respondent told her to sign the cheque. The Respondent also instructed Carrie Chan to ask an employee of Sharpo to produce a purchase order. Sharpo transferred the sum to a company controlled by Chan, and the sum was used by Chan for his own purpose. The transaction never existed. When asked by auditors later for a stock check, the Respondent instructed Carrie Chan to say

that the auditors could wait until the end of the year to do the stock check. The court found that both the Respondent and Lai were dishonest and convicted them.

- (14) Charge 3: conspiracy to steal a chose in action in the sum of \$4 million from CSCP in January 2005: In January 2005, the Respondent advised Chan and Hon that they could use the same modus operandi as in Charge 1 above. This time however a sum of \$4 million was transferred from CSCP to Sharpo under the pretext of working capital as recorded in the payment voucher. The minutes of the board meeting approving the transfer was signed by the Respondent. The Respondent also gave instructions to Cannie Chan who prepared the cheque, and a letter purported from Sharpo requesting for \$4 million as working capital. Respondent also told Cannie Chan that Chan would repay this money soon. The sum was received by Sharpo, and then through further transfers, received by Chan and Hon. No goods were involved in this bogus transaction, and the money was not repaid to CSCP. The court found that the Respondent, Hon and Lai were dishonest, and convicted them.
- (15) Charge 6: conspiracy to steal a chose in action in the sum of \$3 million from CSCP in September 2004: In September 2004 Hon needed \$3 million and came up with a plan to steal \$3 million from CSCP by means of a false loan to one Wong Kwun-wai. The Respondent signed on the board minutes approving the loan, and requested Chan to sign on the purported loan agreement, which was granted without any security or income-proof. The Respondent gave instructions to Cannie Chan to make out the cheque for the sum, which was signed by the Respondent. The Respondent instructed Cannie Chan to go to the bank with Wong Kwun-wai to cash the cheque, and the money was brought back to the office and given to the Respondent. The loan was a sham and the money was never repaid by Wong Kwun-wai. The court found both the Respondent and Hon dishonest and convicted them.
- (16) Charge 7: conspiracy to steal a chose in action in the sum of \$2.4 million from CSCP in October 2004: In October 2004 Hon needed money and suggested a friend to get a loan from CSCP. The conspiracy was to steal \$2.4 million from CSCP by means of a false loan to one Chan Chun-kuen. The Respondent instructed Cannie Chan to prepare the payment voucher and the 2 cheques – one for \$2 million payable to Chan Chun-kuen and another cash cheque for \$400,000. The 2 cheques were signed by the Respondent and Chan. As instructed by the Respondent, Cannie Chan went to the bank to deposit the \$2 million cheque into the account of Chan Chun-kuen, and cashed the cash cheque. She brought the \$400,000 cash back to CSCP office, and the court found that the sum was likely to have been received by the Respondent as he signed the receipt voucher. The court found the loan to be a sham and the Respondent was instrumental in this fraudulent scheme. He was found to be dishonest and convicted.
- (17) Charges 1, 3, 6, and 7 above concern the misappropriation of monies from CSCP. In order to cover up the misappropriation further offences were committed as set out in Charges 8, 9, 11, 12, and 13 below.

- (18) Charge 8: conspiracy to defraud CSCP and its shareholders between December 2004 and April 2005 by (inter alia) falsely representing there was a loan for \$25 million for a project in Guilin, PRC, causing the company to part with the said \$25 million, subsequently transferring back the sum to the company by false representations that the transfers were related to other transactions, and creating or using false or misleading accounting documents: A plan was hatched in about December 2004 for CSCP to make an advance payment of \$25 million for a purported joint venture in Guilin through the vehicle of Guilin China Sciences Conservational Power Limited ("Guilin China"). The Respondent signed on the board minutes approving the purported advance payment. The Respondent gave instructions to Carrie Chan to prepare the bank transfer form and the payment voucher, and also gave her the account details of the remittance agent Wong Kim-chung. She was also told that the money would return to CSCP to cover up the previous misappropriation of monies. The sum of \$25 million was transferred to the account of Wong Kim-chung, and the sum was then broken up into smaller sums and remitted back to CSCP via other remittance agents. All of those deposits were not supported by any documents. The Respondent signed the receipt vouchers for the sums and gave the deposit slips to Carrie Chan. Respondent also instructed Carrie Chan to prepare 2 letters in relation to the transfer, which were then given to the Respondent for checking. At the Respondent's instructions Carrie Chan also prepared a false chop for Guilin China, which was affixed to the 2 letters.
- (19) Of the monies, it never went to the Guilin project and the same would return to CSCP. The Respondent gave \$30,000 cash to Carrie Chan to pay Wong Kim-chung as commission. The court found that the Respondent occupied a crucial role in orchestrating this large-scale accounting fraud. Both the Respondent and Hon were found by the Court to be dishonest, and were convicted.
- (20) Charge 9: conspiracy to defraud CSCP and its shareholders between December 2004 and April 2005 by (inter alia) falsely representing there was an earnest money in the sum of \$8 million for a project in Meizhou, PRC, causing the company to part with the said \$8 million, subsequently transferring back the sum to the company by false representations that the transfers were related to other transactions, and creating or using false or misleading accounting documents: Another plan was devised in about December 2004 in which \$8 million would be paid as "earnest money" for a project in Meizhou, PRC. A memorandum of understanding ("MOU") was entered into between a subsidiary of CSCP and another company of which one Chan Chun-kuen (a close friend of Hon) and another were beneficial owners. Later the Respondent gave instructions to Carrie Chan to prepare another MOU when it appeared that Chan Chun-kuen might not be authorized to sign on behalf of the company. The Respondent signed the board minutes approving the payment, and gave instructions to Carrie Chan to prepare a cheque for \$8 million payable to Chan Chun-kuen. The cheque was signed by the Respondent and Chan, and the Respondent also endorsed the cheque when it was presented at the bank. The Respondent also signed on the journal voucher and receipt voucher. After Chan Chun-kuen deposited the \$8 million cheque into his account, various smaller sums were repaid to CSCP by various means, including \$4 million-odd given in cash to the

Respondent, who used at least some of the monies to settle outstanding matters of CSCP. The court found that both the Respondent and Hon were dishonest and the money did not go to the Meizhou project at all, and convicted them.

- (21) Charge 11: conspiracy to defraud CCPHL by dishonestly causing and permitting a wholly-owned subsidiary of the company to part with a sum of \$5 million on the pretext of a false loan to Lai in December 2004: In December 2004 a loan agreement between Hong Tong Hai Capital Limited, a subsidiary of CCPH, and Lai was entered into under which Lai received a loan of \$5 million without any securities or income proof. The Respondent gave Carrie Chan a copy of the said loan agreement, and told her that the monies would be returned to CSCP to cover the previous misappropriation of monies. As instructed by the Respondent, Carrie Chan told Lai to make out a cheque for \$4,450,000 and deposit it into CSCP's bank account, and brought the remaining \$550,000 in cash. Lai did as instructed, and gave the \$550,000 cash to Carrie Chan, who in turn gave it to the Respondent, who signed the receipt voucher for the bank deposit. At the Respondent's suggestion money was entered in the books as received from Sharpo for purchase of goods. The court found that the loan was a sham, and the Respondent, Lai and Hon were all dishonest, and convicted.
- (22) Charge 12: conspiracy to defraud CCPHL by dishonestly causing and permitting a wholly-owned subsidiary of the company to part with a sum of \$8 million on the pretext of a false loan to one Wong Chi-keung in December 2004: This charge involved a similar modus operandi to that in Charge 11 above. Again a purported loan of \$8 million was granted by Hong Tong Hai Capital Limited, a subsidiary of CCPH, to one Wong Chi-keung, without any securities or income proof. Carrie Chan was told by the Respondent that Wong Chi-keung would come to the office for a loan, and she received a copy of the loan agreement from the Respondent. Carrie Chan was also told that the loan would be returned to CSCP to cover up the previous misappropriation of monies. On the same day that the cheque for \$8 million was paid into Wong Chi-keung's account, the money was transferred to Wong kim-chung (a remittance agent), and then split into 4 sums and remitted back to CSCP. The Respondent signed the receipt voucher. The court found that the loan was a sham, to cover up the previous misappropriation of monies, and found both the Respondent and Hon dishonest, and convicted them.
- (23) Charge 13: publishing a false statement in the Annual Report of CSCP in April 2005, namely the trade and other receivables in the consolidated balance sheet included the false receivables of \$25 million and \$8 million referred to in Charges 8 and 9 above: The consolidated balance sheet in CSCP's annual report for the year ended 31 December 2004 (published in April 2005) was signed by Hon (as Chairman of the Board) and the Respondent, as the director responsible for overseeing finance matters of the group. It showed an item "trade and receivables" under current assets amounting to \$107,575,000. The said sum included 2 items which were, to the knowledge of both the Respondent and Hon, false – the \$25 million purportedly for the Guilin project and the \$8 million purportedly for the Meizhou project as set out in Charges 8 and 9 above. As the

Respondent stands convicted of both of those matters, the court also found that the Respondent and Hon knowingly published a false statement in relation to the 2 matters.

- (24) As for Complaint 2 (alternative to Complaint 1), the acts for which the Respondent was convicted of the 9 charges in DCCC 661/2006, as referred to above, are dishonourable conduct. That included conspiracies to steal a total of \$10.9 million, and the conspiracies to defraud involved another \$46 million. The court found that both the Respondent and Hon were the masterminds who orchestrated the schemes, and provided the overall fraudulent strategy. The Respondent was sentenced to 6 years imprisonment originally, which was reduced to 5 years and 4 months on appeal. He was also disqualified from being a director of a company for 10 years, (the maximum period which could be imposed by the District Court). By reason of such acts, the Respondent was guilty of dishonourable conduct.
3. The Respondent admitted the complaints against him. He did not dispute the facts as set out in the complaints. On 13 May 2015, the parties agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules ("DCPR") be dispensed with.
 4. On 2 June 2015, the Disciplinary Committee agreed to the parties' joint application to dispense with the steps set out in Rule 17 to 30 of the DCPR in light of the admission made by the Respondent and the Disciplinary Committee directed the parties to make written submissions on sanctions and costs.
 5. On 15 June 2015, the Complainant made written submission on sanctions and costs.
 6. On 17 June 2015, the Respondent made written submission on sanctions and costs.
 7. 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, the Respondent's personal circumstances, and the conduct of the Complainant and the Respondent throughout the proceedings.
 8. The Disciplinary Committee orders that:-
 - (1) the name of the Respondent be removed from the register of certified public accountants permanently on the 40th day from the date of this order under Section 35(1)(a) of the PAO; or
 - (2) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$24,066 under Section 35(1)(iii) of the PAO.