

IN THE MATTER OF

A Complaint made under Section 34(1) 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. Ip Wing Lun, Allan RESPONDENT  
Membership No. F04513

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

Members: Mr. Kaung Wai Ming Alexander (Chairman)  
Mr. David Fenn  
Ms. Tsui Pui Man Winnie  
Mr. Ryan John Joseph  
Mr. Man Mo Leung

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**ORDER & 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**” or the “**Complainant**”) against Mr. Ip Wing Lun, Allan, a certified public accountant (the “**Respondent**”).
2. On 3 November 2016, the Respondent signed a confirmation (the “**Confirmation**”) whereby he admitted the complaint against him, and confirmed his agreement to the facts, as set out in the letter from the Complainant to the Institute’s Council dated 1 September 2016 (the “**Complaint**”).
3. In light of the admission by the Respondent and by consent between the parties, the Disciplinary Committee (“**DC**”) has directed that the steps set out in Rules 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with, and that the parties make written submissions as to sanctions and cost which should be imposed by the DC.
4. In the Confirmation, the Respondent confirmed his agreement to the facts and his admission of the complaint as set out in the Complaint.

5. In arriving at its decision as to sanctions and cost, the DC has accordingly taken into consideration what has been set out in the Complaint.
6. The particulars set out in the Complaint can be summarised in material part as follows:-
  - (i) On 8 October 2014, the Respondent was convicted in the High Court of one count of conspiracy to offer advantages to an agent contrary to sections 9(2)(a) and 12(1) of the Prevention of Bribery Ordinance, and sections 159A and 159C of the Crimes Ordinance.
  - (ii) The Respondent's conviction came after a trial by jury and the findings by the jury that the Respondent had been involved in a conspiracy to offer advantages to Tan Sim Chew ("**Tan**"), the then Chairman of Benefun International Holdings Limited ("**Benefun**"), a Hong Kong listed company.
  - (iii) In 2007, Benefun had run into financial difficulties and Tan and his associates were keen to divest themselves of their shareholding interests in Benefun (which represented 32% of the issued share capital of Benefun at the time).
  - (iv) The conspiracy concerned an undisclosed agreement (the "**Agreement**") entered into on 5 May 2008 by Tan and Super Aim Group Limited ("**Super Aim**") whereby Tan would sell the said shareholding interests to Super Aim for consideration of HK\$80 million. One of the terms of the agreement was that Super Aim would ensure that all of the original assets of Benefun (the "**Assets**") would be transferred for nil consideration to Tan or persons designated by him.
  - (v) In return, Tan would cause the appointment of Super Aim's nominees to the board of directors of Benefun, to constitute a majority on the board and to cause Benefun to pass a resolution to acquire a mining business for a pre-determined price of HK\$500 million (the "**Acquisition**").
  - (vi) The Agreement was not disclosed in the announcement or the circular issued by Benefun to shareholders in respect of the Acquisition.
  - (vii) In sentencing the Respondent, the judge remarked that the Respondent had "*played an active role in the early stages of the conspiracy to offer advantages to Tan. He prepared many documents to bring it to fruition.*"
  - (viii) The evidence of the Respondent's active involvement in and knowledge of the fraudulent arrangement as set out in the judge's summing up to the jury included (a) the fact that documents relating both to the preparation and the implementation of the arrangement, including drafts of the Agreement, were discovered in the Respondent's office during a search by the ICAC, (b) the fact that the Respondent had attended various meetings at Benefun, carried out a due diligence exercise of Benefun and provided input as an accountant to the

working group set up to implement the Agreement, (c) the fact that the Respondent facilitated the transfer by Tan of his shareholding interests including opening an account at Yicko Securities, and was in possession of unsigned bought and sold notes, instruments of transfer and instructions to Yicko Securities in his office, and (d) the fact that the Respondent was a party to e-mail discussions between Benefun's lawyers and the Hong Kong Stock Exchange regarding the drafting of Benefun's circular which contained various misrepresentations.

- (ix) The Respondent was sentenced to 3 years imprisonment, which was subsequently increased to 4 years by the Court of Appeal.
  - (x) In sentencing the Respondent, the judge considered that the Respondent had been aware that the sums being paid to Tan were inducements to bring the "*corrupt scheme to fruition*".
  - (xi) In finding the Respondent guilty of the conspiracy charge the jury had rejected his defence that he was simply providing accounting services without knowledge of or active involvement in the underlying fraud(s).
7. The DC agrees that the Respondent was guilty of dishonourable conduct under section 34(1)(a)(x) of the Professional Accountants Ordinance ie. conduct which would reasonably be regarded as bringing or likely to bring discredit upon himself, the Institute or the accountancy profession.
  8. The Respondent was convicted of a crime involving dishonesty. The Respondent has also admitted certain facts relating to his involvement in and knowledge of a fraudulent scheme as a result of which amongst other things misrepresentations were made to the Hong Kong Stock Exchange, shareholders of Benefun and the investing public. This is conduct which would warrant the imposition of a serious sanction.
  9. By a letter dated 16 February 2017, the Clerk to the DC, under the direction of the DC, informed the parties that they should make written submissions to the DC as to sanctions and costs within 21 days ie. by 9 March 2017.
  10. The Complainant provided its written submissions on sanctions and costs on 9 March 2017.
  11. The Respondent did not provide any written submissions on sanctions and costs by 9 March 2017. The Clerk to the DC, under the direction of the DC, issued a further letter to the Respondent on 14 March 2017 asking the Respondent to confirm that he did not wish to file any written submissions on sanctions and costs and informing the Respondent that if no submissions on sanctions and costs were received from him within 7 days, the DC proceed to consider the matters of sanctions and costs without any submissions from him.

12. In the end, the Respondent confirmed by e-mail on 24 March 2017 that he did not have any submissions on sanctions and costs.
13. The DC proceeded to consider the matters of sanctions and costs without any submissions from the Respondent.
14. In the circumstances, the Chairman of the DC directed that it was not necessary to convene a sanctions hearing.
15. The Complainant, in its submissions dated 9 March 2017, drew to the attention of the DC that the Respondent had previously been the subject of a disciplinary action by the Institute imposed on 10 September 2015 for failure or neglect to observe, maintain or otherwise apply a professional standard issued by the Institute, and was ordered on that occasion to pay a penalty of HK\$1,000 and costs to the Institute. It appears that failure related to the Respondent's directorship of a Hong Kong listed company and a transaction where the company concerned had failed to seek shareholders' prior approval for a major transaction under the Listing Rules, resulting in a finding that the Respondent and other directors were in breach of their director's undertakings for failing to use their best endeavours to procure the company to comply with the Listing Rules. However, that previous disciplinary action clearly involved conduct of a far less egregious nature, and would appear to have little bearing on the sanction to be imposed in this case.
16. The Complainant has referred the DC to 4 past cases which are said to be similar (D-07-0257-C, D-10-0520-O, D-11-0640-C and D-11-0583-H). All of these cases involved respondents who had been convicted of criminal offences and sentenced to imprisonment for periods ranging from 2 year and 9 months to 6 years. It is noted that two of those cases (D-10-0520-O and D11-0640-C) involved convictions for the offence of money laundering, which are different in nature to the conviction of the Respondent in the present case.
17. The respondent in D-07-0257-C, who was the finance director of a Hong Kong listed company, was convicted of four criminal offences involving dishonesty, namely conspiracy to offer advantages to agents, conspiracy to commit false accounting, and two counts of conspiracy to steal. The sanction ordered was a permanent removal from the register of CPAs but this was also subject to an order that any application for readmission for membership by the Respondent should not be approved within a period of 8 years thereafter.
18. The respondent in D-11-0583-H, who was the chief financial controller and executive director of a Hong Kong listed company, was convicted of 9 charges involving conspiracy to steal, conspiracy to defraud and publishing a false statement in a company's annual report. The sanction ordered was a permanent removal from the register of CPAs.

19. The Complainant suggests that the appropriate sanction would be a permanent removal or failing that a removal order of a duration of at least 10 years. The Complainant also makes the observation that this would be consistent with the imposition by the trial judge against the Respondent of a disqualification order under Section 168E of the Companies Ordinance of a duration of 10 years.
20. In deciding on the appropriate sanction, the DC has a wide discretion under Section 35 of the Professional Accountants Ordinance. What would be an appropriate sanction in any particular case must be considered in the light of all of the circumstances of that particular case.
21. The DC takes into account the fact that it is not alleged that the Respondent initiated the fraudulent scheme, or that the Respondent derived any personal gain from his conduct beyond fees paid to his CPA firm for accounting services.
22. The DC also takes into account the fact that (i) the Respondent has already served a custodial sentence, (ii) the Respondent's criminal conviction and the stigma attached to the sanction against him in these disciplinary proceedings will inevitably affect any future career prospects which he may have, and (iii) the Respondent has admitted the complaint against him, which has allowed Rules 17 to 30 of the Disciplinary Committee Proceedings Rules to be dispensed with and shortened these proceedings considerably, and has resulted in the saving of time and costs.
23. However, the Respondent's breaches involved serious lapses of integrity, and his conduct fell seriously below the standard of integrity, probity and trustworthiness that the public can expect from a member of the HKICPA. They clearly warrant a removal of the Respondent from the register of CPAs and the DC considers that removal of the Respondent from the register for a period of 8 years would be appropriate in this case.
24. As to costs, the DC has a discretion to determine the extent to which costs should be recoverable. Absent any good reason to do otherwise, costs should follow the event ie. be awarded to the successful party in the proceedings. The DC orders that the Respondent pay the Complainant's costs and the costs of the Clerk to the Disciplinary Committee.
25. The Complainant has produced a Statement of Costs and seeks costs in the total amount of HK\$22,618, of which HK\$19,348 represents the costs and expenses of the Complainant itself for conducting its investigation and preparing the complaint in these proceedings, and HK\$3,270 represents the costs and expenses of the Clerk to the DC. The DC considers the costs claimed to be reasonable and allows them in full.

26. The Disciplinary Committee orders that:-

- (1) the name of the Respondent be removed from the register of certified public accountants for a period of eight years commencing on the 50th day from the date of this order under Section 35(1)(a) of the PAO; and
- (2) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant including the costs of the Clerk to the Disciplinary Committee in the sum of HK\$22,618 under Section 35(1)(iii) of the PAO.

Dated the 11th day of May 2017

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