

IN THE MATTER OF

A Complaint made under Section 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

Chan Wing Keung, Simon RESPONDENT
Membership No. A11614

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

Members: Mr. Lim Kian Leng, Malcolm (Chairman)
Mr. Hong Wing Kwong, Wallace
Mr. Hui Ching Yu
Mr. Chow Tak Sing, Peter
Mr. Woo King Hang

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 Chan Wing Keung, Simon, certified public accountant (the “Respondent”). Section 34(1)(a)(vi) of the PAO applied to the Respondent.
2. The particulars of the Complaint as set out in a letter dated 11 May 2017 are as follows:-

Background

- (1) On 26 April 2016, the Institute received a letter from the Law Society concerning an Accountant’s Report dated 30 October 2015 issued by the Respondent in respect of a

solicitor's firm (the "Law Firm")¹.

- (2) In the Accountant's Report, the Respondent stated *inter alia* the following:
- "(1) I am satisfied that during the accounting period the firm had complied with the provisions of the Solicitors' Accounts Rules;
- (2) I am not aware of any matter which appears to affect adversely any client account or any trust money held by the firm to a material extent."
- (3) However, the Monitoring Accountants of the Law Society of Hong Kong (the "Law Society") subsequently discovered that the Law Firm had failed to comply with a number of provisions of the Solicitors' Accounts Rules ("SAR") including the following:
- (a) Failure to deposit clients' money into the client account and record the same in clients' ledger/cash book. The Law Firm admitted to the Law Society that they had not prepared clients' cash book, contrary to Rules 10(1) and 10(2).
- (b) There were two overdraft balances of the clients' bank account on 18 February 2015 and 2 March 2015. The Law Firm could not provide any documentary evidence in support of the client's consent regarding a withdrawal of an amount of HK\$1,180 from that client's bank account on 2 March 2015, contrary to Rule 7.
- (c) The Law Firm was unable to provide the complete set of bank statements of its client bank account for the period from 1 January 2015 to 31 October 2015 for the Law Society's inspection, contrary to Rule 10A.
- (d) There was no record of office ledger and office cash book of the Law Firm, contrary to Rule 10(3).
- (4) Given the above, the Law Society asked the Institute to investigate possible professional misconduct arising from apparent non-compliance with Rule 4 of the Accountant's Report Rules, Cap159A ("ARR") by the Respondent before issuing the Accountant's Report.
- (5) Paragraph 100.5 (c) of the Code of Ethics for Professional Accountants (revised July 2015, effective 1 January 2011) ("Code") states:
- "A professional accountant shall comply with the following fundamental principles
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- (c) Professional Competence and Due Care - to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional services based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards. "
- (6) Paragraph 130 of the Code sets out in detail the principle of Professional Competence and Due Care and provides as follows:

¹ On 29 December 2015, the Law Society's Council resolved to exercise its powers to intervene in the practice of the Law Firm.

"130.1 The principle of professional competence and due care imposes the following obligations on all professional accountants:

- (a) To maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service; and
- (b) To act diligently in accordance with applicable technical and professional standards when performing professional activities or providing professional services."

"130.2 Competent professional service requires the exercise of sound judgment in applying professional knowledge and skill in the performance of such service"

"130.4 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis."

The Complaint

- (7) Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he did not observe, maintain or otherwise apply sections 100.5 (c) and 130 of the Code because he failed to prepare an Accountant's Report on the Law Firm for the year ended 31 May 2015 with professional competence and due care.

Facts and Circumstances in support of the Complaint

- (8) The principal purpose behind the SAR and the ARR (collectively the "**Rules**") is to prevent the improper handling of client's monies by requiring that a solicitor separates client's monies from his own.
- (9) In particular, Rule 4 of the ARR lays down the duties of an accountant when issuing an Accountant's Report on a firm of solicitors.
- (10) The Institute's Practice Note 840 ("**PN840**") provides guidance on the audit of solicitor firms' accounts under the Rules. Whilst PN840 is intended to be indicative of good practice, accountants are expected to be prepared to explain departures when called upon to do so.
- (11) In addition to providing such guidance, PN840 appends two checklists which an accountant is expected to follow before issuing an accountant's report:
 - (a) Appendix 1 *Key Questions Based on the Solicitors' Accounts Rules* sets out a list of key questions based upon the SAR, designed to ensure compliance with the firm's obligations regarding clients' monies; and
 - (b) Appendix 2 *Audit Programme under Rule 4 of the Accountant's Report Rules* sets out the audit procedures and steps expected of the accountant to ensure compliance with the SAR ("**Audit Program**").
- (12) In respect of Appendix 1, any "NO" answer to a key question would normally indicate that the SAR has not been complied with and further investigation would be expected before an accountant signs the accountant's report. Insofar as breaches have been

identified, the accountant should issue a qualified accountant's report.

See: §6 of PN 840

- (13) As regards Appendix 2, the Audit Programme is intended to be an indication of what is required by the ARR. If anything is discovered that indicates that the Rules have not been complied with, an accountant is expected to conduct further detailed examinations before signing the accountant's report.

See:§20 of PN 840

- (14) Following receipt of the Law Society's request, the Institute wrote to the Respondent on 20 May 2016 and 5 August 2016. The Respondent responded on 1 June 2016 and 17 August 2016, respectively.
- (15) Upon a review of the working papers provided by the Respondent under cover of his letter dated 1 June 2016, it was apparent that, in preparing the Accountant's Report, the Respondent had adopted both Appendix 1 and 2 of PN 840.
- (16) On a detailed review of the Respondent's working papers and the Respondent's responses, the following deficiencies were identified:

Failure to obtain bank certificates (bank confirmations)

- (17) The Respondent failed to obtain bank certificate(s) for the Law Firm's clients accounts as required under Step 9 of the Audit Program but simply relied on the bank statement provided by the Law Firm and the Law Firm's assurance that this was the only client bank account at HSBC. Obtaining a bank certificate directly from HSBC is important as it would have provided clear and independent confirmation that there was only one client account with HSBC.

Deficient sampling basis

- (18) The Respondent had unusually restricted his test work of the bank statements to the month of December 2014. However, he expressed his opinion on the records of the Law Firm for the year ended 31 May 2015 in the Accountant's Report. There was no documented explanation on why he confined his tests to the December 2014 transactions.

Deficient test work on client money deposits

- (19) The only test that the Respondent carried out on client deposits was when he compared six deposit entries in the HSBC client bank account with the sales invoice breakdown. The relevant details are extracted below:

<i>No./ invoice date</i>	<i>amount</i>	<i>Bank-in date</i>	<i>description</i>
#6701/ 2 Dec	HK\$1,200	1 Dec	Civil celebrant
#6702	HK\$4,500	17 Dec	(invoice copy not available)

#6703/ 4 Dec	HK\$1,200	5 Dec	divorce
#6704/ 8 Dec	HK\$900	6 Dec	divorce
#6707/ 11 Dec	HK\$20,000	12 Dec	Settlement of money dispute
#6713/ 18 Dec	HK\$3,500	9 Dec	certified

- (20) There was no evidence showing how the Respondent could conclude that client monies had been paid into the client account, without delay² (Rule 3, SAR) because he did not obtain evidence to show when client money was received by the Law Firm. He did not check the deposit to cash/cheque register or cash book and identify any gaps between receipt date and bank-in date.
- (21) The above test shows that non-client monies had been paid into the client account and it was in breach of Rule 4 of SAR³. The monies which had been received in payment of the Law Firm's bills (Invoice #6703 and #6707) had been deposited in the client account. However, the Respondent did not report the above in the Accountant's Report.
- (22) There was no evidence showing how the Respondent could conclude that client monies not paid into client bank account were restricted to the types specified in Rule 9 of SAR⁴ when he had not checked the office bank accounts.
- (23) The Respondent could not conclude that client monies deposits were correctly posted to personal accounts in client ledger and to nominal accounts⁵ because he had not checked those client money deposits to client ledger and nominal accounts.

Failure to report the Law Firm's non-compliance relating to preparation of monthly bank reconciliation

- (24) The SAR requires that Law Firm should prepare monthly reconciliation of client accounts and client bank statements⁶. The Respondent documented that he was aware that no such reconciliation was performed. In his representations to the Institute, he admitted that he ought to have reported it in the Accountant's Report.

Failure to circularise client accounts

- (25) Step 12 of the Audit Program (Appendix 2 of PN840) requires circularisation of client accounts on a test basis in accordance with Statement of Auditing Standard ("SAS") 402 External Confirmation, was marked "N/A". The Respondent did not document any explanation on deviation from the said requirement.

² Step 2 of Appendix 1 "Key Questions based on the SAR"

³ Step 3, Appendix 1 "Key Questions based on the SAR"

⁴ Rule 9 of SAR, Step 4 of Appendix 1 "Key Questions based on the SAR"

⁵ Step 2, Appendix 2 "Audit Program under Rule 4 of the ARR"

⁶ Step 5A of Appendix 2 "Audit Program under Rule 4 of the ARR" " and Step 9A of Appendix 1 "Key Questions based on the SAR". Rule 10A of SAR.

Deficient test work on withdrawals from client bank accounts

- (26) In the working paper titled "test check to bank clients' account", the Respondent documented that he had performed the following regarding test on withdrawals from client bank account:

"Test checked the transfer of money to office accounts when finish the job (invoice and bank statement attached)"

In the copy of HSBC client bank account attached at the back of that working paper, the Respondent put marks on two withdrawals which he had checked:

<i>Date</i>	<i>Description on bank statement</i>	<i>Amount</i>
<i>4 Dec</i>	<i>Cheque 564843</i>	<i>HK\$1,180</i>
<i>9 Dec</i>	<i>Debit as advised by phone</i>	<i>HK\$3,500</i>

- (27) Rule 7 of SAR requires that withdrawals from client account should be made with restricted purposes, for example, with client's authority, to reimburse the firm's expenditure; or for settlement of bill of costs with a written notification to client etc.⁷
- (28) In the test of withdrawal entries in the client bank account, the Respondent accepted that the withdrawals were properly made when they were supported by an invoice and that the job had finished. He failed to ascertain whether the Law Firm had issued a written notification to client before withdrawing money from the client bank account. The Respondent did not perform the test in accordance with the SAR requirement.
- (29) Further, as required by Step 3-5 of the Audit Program, the Respondent had not checked the two withdrawal entries to :
- (a) cash book
 - (b) client's withdrawal instructions
 - (c) postings to personal account in client ledger and nominal accounts.

Deficient work in relation to the requirements under Rule 4(1)(d) of the ARR

- (30) Rule 4(1)(d) of the ARR requires the Respondent to compare:
- (a) the liabilities of the firm to its clients and if trust money has been paid into the client account under the Solicitors' Accounts Rules, to the cestuis que trustent, as shown in its books of account; and
 - (b) the balances standing to the credit of the client account.
- (31) There is no evidence that the Respondent had compared the two items under Rule 4 of the ARR.

⁷ Step 5 of Appendix 1 "Key Questions based on the SAR"

Deficient work in relation to the requirements under Step 8 of the Audit Program

- (32) Step 8 of the Audit Program requires the Respondent to scrutinise clients' ledger accounts, for not less than two dates during the year, to ensure that no accounts have gone into debit and that no incorrect items have been included. The step was marked "no material errors found".
 - (33) The Respondent checked that on 1 and 9 December 2014, the bank balance was HK\$0.99. He stated that he confirmed with the principal of the Law Firm and checked the client sheet that there was no outstanding case at the selected date.
 - (34) The Respondent did not scrutinise the client ledger as required but he checked the client bank account. He did not properly perform the test in accordance with PN840.
 - (35) Based on the above, the Respondent did not conduct the engagement with professional competence and due care, section 34(1)(a)(vi) applies to him.
3. The Respondent admitted the complaint against him. He did not dispute the facts as set out in the complaint. On 14 June 2017, the parties agreed that the steps set out in Rules 17 to 30 of the Disciplinary Committee Proceedings Rules ("DCPR") be dispensed with.
 4. By a letter dated 8 December 2017 addressed to the parties, the Clerk, under the direction of the Disciplinary Committee, informed the parties that the Disciplinary Committee had approved 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 directed the parties to make written submissions on sanctions and costs by 29 December 2017.
 5. The Complainant provided his submissions on sanctions and costs on 29 December 2017. The Respondent provided his submissions on sanctions to the Disciplinary Committee on 2 January 2018.
 6. The Disciplinary Committee has considered the submissions by the Complainant dated 29 December 2017 and the Respondent dated 2 January 2018.
 7. The complaint was found proved on the basis of the admission by the Respondent.
 8. 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 complaint, the Respondent's personal circumstances, and the conduct of the Respondent throughout the proceedings. The Disciplinary Committee also took note that although there was no record of past disciplinary orders against the Respondent, there was an earlier complaint against the Respondent that was resolved by Resolution by Agreement made in August 2016. In that case, the Respondent did not report the solicitors' firm's failure to keep a separate client bank account and state the appropriate

name of the solicitors' firm's registered proprietor in the accountant's report. The Respondent admitted the facts of that case and his non-compliance with the relevant professional standards. He was reprimanded by the Institute and he had to pay a penalty of HK\$15,000 and costs of HK\$10,000.

This is therefore the second incident in which the Respondent failed to observe the ARR requirements. However, unlike the present case, the deficiencies identified in that case were not so serious. In the case before this Disciplinary Committee, the Respondent had simply allowed the principal of the Law Firm to control the entire audit process by his unquestioning acceptance of the very limited information that the principal provided to him. This case is an example of a total abdication of responsibilities as an auditor, under Rule 4 of the ARR.

9. The Disciplinary Committee orders that:-

- (a) the Respondent be reprimanded under Section 35(1)(b) of the PAO;
- (b) the practising certificate issued to the Respondent be cancelled under s.35(1)(da) of the PAO and it shall take effect on the 42nd day from the date of this order;
- (c) a practising certificate shall not be issued to the Respondent for 12 months commencing from the 42nd day after the date of this order under s.35(1)(db) of the PAO; and
- (d) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$56,204 under Section 35(1)(iii) of the PAO.

Dated 20 February 2018