

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

Lee Yiu Sun  
(Membership no.: F03440)

RESPONDENT

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

Members: Mr. Raymond Chan (Chairman)  
Ms. Chan Ka Man Margaret  
Ms. Chan Chui Bik Cindy  
Ms. Chua Suk Lin Ivy  
Mr. Li Ka Fai David

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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**”) against Lee Yiu Sun, CPA (the “**Respondent**”).
2. The Complaint as set out in a letter dated 6 November 2017 from the Registrar to the Council of the Institute (the “**Complaint**”) are as follows:-

(1) BACKGROUND

- 1.1 In April 2017, the Institute was made aware of certain announcements issued by the Securities and Futures Commission ("SFC"). They showed that the Respondent had been reprimanded in 2015 for breaching his fiduciary duties under the Listing Rules. He was also sanctioned by the Court of First Instance for his failure to act diligently, honestly and in a company's best interest, as further explained in paragraphs 4.1 to 4.7 below.

(2) THE COMPLAINTS

Complaint 1

- 2.1 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 section 100.5(a) as elaborated in section 110.2 of the Code of Ethics for Professional Accountants ("Code"), when he put forward a non-existent Mutual Understanding and Agreement in a Letter of Confirmation dated 5 December 2008 and a Clarification Announcement dated 16 December 2008, thereby making materially false or misleading statements.

Complaint 2

- 2.2 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 section 100.5(e) as elaborated in section 150.1 of the Code, when he was found to have acted in breach of his duties as director under the GEM Listing Rules and common law, thereby failing to comply with relevant laws and regulations and avoid any action that discredits the profession.

Complaint 3

- 2.3 Section 34(1)(a)(viii) of the PAO applies to the Respondent in that his failure to observe the Code as set out in Complaints 1 and/or 2 above amounted to professional misconduct.

(3) RELEVANT STATUTORY PROVISIONS AND PROFESSIONAL STANDARDS

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

3.2 Section 34(1)(a)(viii) of the PAO provides that a complaint may be made against any CPA for having been guilty of professional misconduct.

3.3 Section 100.5(a) of the Code states that a professional accountant shall comply with the fundamental principle of integrity, to be straightforward and honest in all professional and business relationships. Section 100.5(e) of the Code states that a professional accountant shall comply with the fundamental principle of professional behavior to comply with relevant laws and regulations and avoid any action that discredits the profession.

3.4 Section 110.2 of the Code states that:

*"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....."*

3.5 Section 150.1 of the Code further states that:

*"The principle of professional behavior imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any action that the professional accountant knows or should know may discredit the profession. This includes actions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession."*

#### (4) FACTS AND CIRCUMSTANCES IN SUPPORT OF COMPLAINTS 1 & 2

4.1 The Respondent was the Executive Director and Chief Executive Officer of First China Financial Network Holdings Ltd. ("**First China**")<sup>1</sup>, as well as the Compliance Officer of First China<sup>2</sup>, during the relevant times.

4.2 In November 2007, First China completed an acquisition to acquire the entire interest of a PRC company ("**Acquisition** ") from Fame Treasure Ltd. ("**Fame Treasure**").

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<sup>1</sup> First China was listed on the Growth Enterprise Market ("GEM") of the Hong Kong Stock Exchange (stock code: 8123) on 11 January 2002.

<sup>2</sup> Paragraph 69, page B22.

4.3 On 16 December 2008, First China issued a Clarification Announcement ("CA") stating that prior to the Acquisition, First China and Fame Treasure had an alleged mutual understanding and agreement ("MUA") that net assets in excess of RMB 8 million would be distributed as dividends. The MUA was not referred to in the agreement or supplemental agreement relating to the Acquisition, but was allegedly confirmed by (inter alia) the Respondent in a Letter of Confirmation ("LC") dated 5 December 2008. The sum of RMB18,692,000 was distributed as dividend pursuant to the MUA.

4.4 In November 2012, the Respondent was named as one of the respondents in a court action filed by the SFC under section 214 of the Securities and Futures Ordinance for breaching his director's duty to First China by falsely putting forward the non-existent MUA. The court found that the MUA did not in fact exist, and that in putting forward the MUA in the LC and the CA the Respondent was acting dishonestly. He therefore breached his duties as directors both under the GEM Listing Rules and under common law. As a result, RMB 18,692,000 was wrongly paid to Fame Treasure.

4.5 In response to the SFC's application, the court ordered the Respondent to be disqualified from being a director or involved in the management of any listed or unlisted corporation in Hong Kong for five years.

4.6 The court's judgement demonstrated that the Respondent had made false or misleading statements concerning the MUA dishonestly, and also failed to comply with the relevant laws and regulations concerning director's duties, namely Rule 5.01 of the GEM Listing Rules and the common law.

4.7 As such, the Respondent failed to comply with sections 100.5(a) & (e), 110.2(a) and 150.1 of the Code.

#### (5) FACTS AND CIRCUMSTANCES IN SUPPORT OF COMPLAINT 3

5.1 The judge in this case stated that he was in no doubt that the Respondent "had acted dishonestly in respect of the MUA"<sup>3</sup>. The court also said that breach of trust by a fiduciary is a very serious matter, and a large sum of money was involved.

5.2 In addition to dishonesty there is also the breach of director's duties, as the Respondent failed to consider the matter carefully with due regard to the interests of the company.

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<sup>3</sup> Paragraph 200, page B47.

- 5.3 A CPA is expected to carry out his professional duties with integrity, competence and due care. The Respondent failed to act with integrity and to fulfil his duties as director of First China to ensure the company complied with relevant laws and regulations. His improper actions undermined the professional reputation of a CPA.
- 5.4 It was undisputed that the legal saga and the resulting judgement has not only brought disgrace to the Respondent personally<sup>4</sup>, but also discredit to the profession as admitted in the Respondent's submissions to the Institute<sup>5</sup>.
- 5.5 Further, SFC's public reprimand of the Respondent's non-compliances had an adverse impact on both the Respondent and the accountancy profession.
- 5.6 Based on the above, the Respondent's breaches also amounted to professional misconduct in accordance with Section 34(1)(a)(viii) of the PAO.
3. The Respondent admitted the complaints against him. He did not dispute the facts as set out in the Complaint. On 3 January 2018, the parties agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules ("DCPR") be dispensed with.
4. The Disciplinary Committee 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.
5. The complaints were all found proved on the basis of the admission by the Respondent.
6. Parties provided their submissions on sanctions and costs in May 2018.
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 Respondent throughout the proceedings.
8. The Disciplinary Committee orders that:-
- (a) the name of the Respondent be removed from the register of certified public accountants for three years under Section 35(1)(a) of the PAO;
  - (b) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$35,857 under Section 35(1)(iii) of the PAO.

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<sup>4</sup> Paragraph 22, page B58.

<sup>5</sup> Paragraph 7(f) of the letter dated 23 June 2017 to the Institute (page A78).

The above shall take effect on the 40<sup>th</sup> day from the date of this Order.

Dated 3 July 2018

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Mr. Raymond Chan  
Chairman

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Ms. Chan Ka Man Margaret  
Disciplinary Panel A

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Ms. Chua Suk Lin Ivy  
Disciplinary Panel B

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Ms. Chan Chui Bik Cindy  
Disciplinary Panel A

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Mr. Li Ka Fai David  
Disciplinary Panel B