

IN THE MATTER OF

A Complaint made under Section 34(1A) of the Professional Accountants Ordinance (Cap.50)

BETWEEN

The Registrar of the Hong Kong Institute of
Certified Public Accountants COMPLAINANT

AND

Ms. Yuen Suk Ching (Membership no. A02183) 1st RESPONDENT

Mr. Leung Tai Keung (Membership no. A01132) 2nd RESPONDENT

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

Members: Mr. Kaung Wai Ming Alexander (Chairman)
Mr. Donowho Simon Christopher
Ms. Chan Yiting Bonnie
Mr. Copley Simon Charles
Mr. Doo William Junior Guilherme

Date of Decision on Sanctions and Costs: 25 April 2020

DECISION ON SANCTIONS AND COSTS

1. By its decision dated 31 December 2019, the Disciplinary Committee found three complaints against the 1st Respondent to have been made out. Under two of the complaints, the Disciplinary Committee found that the 1st Respondent had failed or neglected to observe, maintain or otherwise apply a number of professional standards in breach of Section 34(1)(a)(vi) of the Professional Accountants Ordinance (“PAO”). Under the third complaint, the Disciplinary Committee found that the 1st Respondent’s conduct had amounted to professional misconduct under Section 34(1)(a)(viii) of the PAO. The defined terms used in that decision have been adopted where appropriate.
2. As against the 2nd Respondent, the Disciplinary Committee found against him on two complaints. The first was that, as the EQCR of certain audits, the 2nd Respondent had failed or neglected to observe, maintain or otherwise apply professional standards in breach of Section 34(1)(a)(vi) of the PAO. The second was that the 2nd Respondent had also committed professional misconduct under Section 34(1)(a)(viii) of the PAO.

3. The Disciplinary Committee has received, and considered, written submissions from the Complainant and from the Respondents in relation to sanctions and costs.
4. The Complainant has indicated that both Respondents have a disciplinary record, and has referred the Disciplinary Committee to the following previous disciplinary actions against them:-
 - (i) In D-14-0988F, as in the present case, the 1st Respondent, as the engagement partner, and the 2nd Respondent, as the EQCR, were found to have breached auditing standards in relation to the audit of a listed company. In that case, the Respondents were reprimanded and penalties of HK\$70,000 and HK\$50,000 were imposed on the 1st Respondent and the 2nd Respondent respectively in September 2016. The breach in that case related to the failure to identify non-compliance with accounting standards in the recognition of the call options in certain convertible bonds and assessment of the value of those convertible bonds, which resulted in material adjustments by way of restatements being made in the subsequent financial year's financial statements.
 - (ii) In D-17-1280F, the 1st Respondent was found, as the EQCR of an audit of a listed company, to have failed to maintain professional competence and due care when discharging her responsibilities. The 1st Respondent's breach in that case related to her failure to identify non-compliance with accounting standards in the calculation of loss per share in the financial statements. The 1st Respondent was reprimanded and a penalty of HK\$100,000 was imposed upon her in August 2019.
 - (iii) In C-16-1174F, a disapproval letter was issued to the 1st Respondent, as the engagement partner, and the 2nd Respondent, as the EQCR, for failing to evaluate the inappropriate accounting treatment of a waiver of a shareholder loan of HK\$16 million in the financial statements of a listed company.
5. The Complainant submits that the Respondents have persistently failed to comply with professional standards. The Disciplinary Committee agrees and has taken this into account in reaching its decision on sanctions.
6. In terms of what sanctions would be appropriate in the present case, the Complainant has referred to the following previous decisions:-
 - (i) A decision (D-03-IC13Q, D-03-IC14Q and D-03-IC15Q) which mainly concerned failures to obtain sufficient appropriate audit evidence for multiple years in relation to sales and purchases, leading to doubts that the sales and revenue for multiple years had been misstated. The respondents involved were reprimanded and penalties of HK\$100,000 and HK\$200,000 respectively were imposed on the 2 engagement directors.
 - (ii) A decision (D-11-0584F) which mainly concerned failures to obtain sufficient appropriate audit evidence over an extended period of time. The respondents involved were reprimanded and penalties of HK\$100,000 were imposed on each of the 2 engagement partners.

- (iii) Two decisions (D-14-0911F and D-13-0825F) which concerned multiple breaches of auditing and accounting standards in the audits of listed companies. The serious breaches amounted to professional misconduct. In the first case, the engagement director had his practising certificate (“PC”) cancelled for 12 months and a penalty of HK\$100,000 was imposed. In the second case, the engagement director and the EQCR had their PCs cancelled for 24 months.
- (iv) A decision (D-15-1100H) which concerned multiple breaches of auditing standards over a number of years in the audits of a trust company, leading to doubts as to whether client monies had been kept separate from the company’s funds and whether they had been used only for the clients’ benefit. The respondent’s PC was cancelled for 12 months.
7. Whilst these previous decisions are in no way binding on the Disciplinary Committee, they do offer useful guidance to the Disciplinary Committee, and assist the Disciplinary Committee in reaching its decision as to what sanctions are appropriate in the present case, given the circumstances of the present case and the findings made in the present case against the Respondents.
8. In their written submissions, the Respondents made a number of arguments.
9. The Respondents set out lengthy arguments that they had done certain additional audit work in relation to (i) prepayments to the Three Suppliers, (ii) prepayments to the Major Customer, (iii) gaining an understanding of the Major Customer, and (iv) assessing the financial capability of the Major Customer, to address the risk of material misstatement. However, the Disciplinary Committee has already found that the audit work performed by the Respondents in relation to the audits of the Company was manifestly inadequate and that there were a significant number of failings in the 2008, 2009 and 2010 Audits in addressing the risk of material misstatement. Although the Respondents invite the Disciplinary Committee to consider whether their breaches of auditing standards were serious in light of these arguments, the Respondents’ arguments do not serve to identify any mitigating factors so much as to re-open and to re-argue whether the audit work they performed was adequate. The Disciplinary Committee maintains the view that the Respondents’ failings are of a serious nature.
10. The Respondents also set out arguments which disputed some specific factual findings made by the Disciplinary Committee. The Respondents asked as a consequence that the Disciplinary Committee consider the relevant allegations of audit deficiencies to be “not proved”. The Disciplinary Committee has no hesitation in rejecting these attempts to re-open and to re-argue matters which the Disciplinary Committee has already determined.
11. The closest the Respondents have come to making a submission in mitigation is where they said:-

“With hindsight, the Respondents admit that certain audit documentations did not comprehensively record all the audit work done in detail, in particular many of the analyses and assessments derived from our understanding of the circumstances and

history of the company, and the relevant industry practice. However, from the volume of documents provided in our previous submissions to the FRC and HKICPA, please kindly consider that a lot of work had been done and documents been reviewed and processed during the course of the audit, which contributed to support the Auditor in arriving at the audit opinion.”

12. As previously found by the Disciplinary Committee, the inadequacies in the audit documentation certainly played a significant part in the Respondents’ breaches, but even after taking into account the explanations given by the Respondents as to what audit work they had performed which was not reflected in the audit documentation, the Disciplinary Committee still found that the Respondents had failed to plan and perform their audits in a way which would properly address the risks of material misstatement, in circumstances where there were clearly “red flags” and heightened risks in the 2008, 2009 and 2010 Audits. The Respondents also submitted that they had done their best to comply with all the relevant professional standards and that it was “unfortunate” that the working papers did not completely reflect all the work that had been done, however, as explained, the Respondents’ breaches were not simply the result of incomplete audit documentation.
13. The Disciplinary Committee notes that:-
 - (i) The 1st Respondent is 63 years old. She says that she is planning to retire from practice “in the near future” and thus it is unlikely that the breaches will re-occur in the future.
 - (ii) The 2nd Respondent is 71 years old. He says that he retired from practice in 2016 and as such the breaches will not re-occur in the future.
14. The Respondents have submitted that an appropriate order for sanctions would involve a reprimand, a financial penalty and payment of costs.
15. The Disciplinary Committee has borne in mind that the objects of the Institute are to (a) regulate the practice of the accountancy profession, (b) represent the views of the profession and to preserve and maintain its reputation, integrity and status, and (c) to discourage dishonourable conduct and practices by certified public accountants. Hence, any sanction ought to be sufficient to serve the purposes of (i) protecting the public interest, (ii) deterring non-compliance with professional standards, (iii) maintaining and promoting public confidence in the profession, and (iv) upholding proper standards of conduct and performance.
16. The Disciplinary Committee has taken into account the fact that any period of cancellation of a PC could have a serious impact on a respondent’s livelihood. However, any such impact would be substantially mitigated by the fact that, as submitted by the Respondents, the 1st Respondent is planning to retire “in the near future” and the 2nd Respondent has already retired.
17. In the case of the 1st Respondent, the Committee is of the view that given her multiple breaches of auditing standards in relation to the audits of a listed company over a number of years, her disciplinary record which shows persistent failures to comply with

professional standards, the finding that she has committed professional misconduct, the seriousness of the breaches, and to ensure that the sanction serves the aforementioned purposes, the appropriate sanction is to cancel the Respondent's PC for a not insubstantial period of time.

18. In terms of the duration of that cancellation, it is noted that in D-14-0911F, D-13-0825F and D-15-1100H, which resulted in cancellations of PCs for periods of 12 months, 24 months and 12 months respectively, the respondents involved had admitted the complaints against them, which was taken into consideration when determining the sanctions against the respondents involved. In the present case, there was no such admission by the 1st Respondent to justify any reduction in the duration of the cancellation, and the 1st Respondent's disciplinary record would also justify an increased duration of cancellation. The Disciplinary Committee considers that the appropriate period of cancellation is 36 months. On this basis, the Disciplinary Committee does not consider that it is necessary or meaningful to additionally reprimand the 1st Respondent or to additionally order her to pay a financial penalty.
19. In relation to the 2nd Respondent, the Complainant has submitted that his position is slightly different given his role as EQCR and that given his disciplinary record is not as serious as that of the 1st Respondent. The Complainant has submitted that the appropriate sanction would be imposing a penalty in the range of HK\$50,000 to HK\$100,000. The Disciplinary Committee considers that any financial penalty against the 2nd Respondent ought to be at the top end of the range suggested by the Complainant and (i) reprimands the 2nd Respondent, and (ii) orders the 2nd Respondent to pay a penalty of HK\$100,000.
20. The Disciplinary Committee also orders the Respondents to pay the costs of and incidental to these proceedings. The Complainant has furnished a Statement of Costs claiming (i) HK\$282,050 in respect of its own staff costs, (ii) HK\$33,494 in respect of the costs of the Clerk to the Disciplinary Committee, (iii) HK\$101,111.20 in respect of the costs incurred by the FRC, and (iv) disbursement costs of HK\$17,995.00 for photocopying. The total amount claimed is HK\$434,650.20.
21. The Complainant has explained that the costs are high due to the complicated nature of the case against the Respondents which involved a voluminous AIB Report and written submissions from the parties which ran to many hundreds of pages. The Disciplinary Committee accepts that this was not a "run-of-the-mill" disciplinary case and that by internalising all of the work done, the Complainant has incurred far lower costs than would have been the case had external lawyers been involved. The Disciplinary Committee finds that the costs claimed by the Complainant are reasonable overall, and taking a broad brush approach in assessing those costs, orders that the Respondents pay costs in the sum of HK\$350,000 on a joint and several basis.
22. Accordingly, the Disciplinary Committee orders that:-
 - (i) The practising certificate issued to the 1st Respondent be cancelled 40 days from the date of this order under Section 35(1)(da) of the PAO;

- (ii) A practising certificate should not be issued to the 1st Respondent for a period of 36 months from the date that the 1st Respondent's practising certificate is cancelled under sub-paragraph (1) above under section 35(1)(db) of the PAO;
- (iii) The 2nd Respondent is hereby reprimanded under Section 35(1)(b) of the PAO and ordered to pay a penalty of HK\$100,000 under Section 35(1)(c) of the PAO; and
- (iv) The Respondents do pay, on a joint and several basis, the costs and expenses of and incidental to these proceedings in the sum of HK\$350,000 under Section 35(1)(iii) of the PAO.

Mr. Kaung Wai Ming Alexander

Chairman

Mr. Donowho Simon Christopher

Member

Ms. Chan Yiting Bonnie

Member

Mr. Copley Simon Charles

Member

Mr. Doo William Junior Guilherme

Member