

**PROCEEDINGS NO.: D-17-12510**

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

MR. NG CHI CHING  
(Membership No. F04959) *Respondent*

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public  
Accountants (“**the Institute**”).

Members: Mr. LAM Ken Chung, Simon (Chairman)  
Mr. CHAN Fung Cheung  
Mr. CHIN Vincent  
Mr. WONG Yue Ting Thomas  
Mr. FUNG Ying Wai Wilson

Date of Hearing: 22 November 2018

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**ORDER AND REASONS FOR DECISION**

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**I. Introduction**

This is a complaint (“**the Complaint**”) submitted by the Registrar (“**the Registrar**”) of the Institute to the Council of the Institute against the Respondent, pursuant to section 34(1A) of the Professional Accountants Ordinance Cap. 50 (“**the Ordinance**”). The Respondent is a certified public accountant.

2. Upon receipt of the Complaint from the Registrar, the Council referred the Complaint to the Disciplinary Panels, and the Disciplinary Committee Convenor duly appointed this Disciplinary Committee (“**the Committee**”) to handle the Complaint.

3. Despite the directions given by the Committee vide a Procedural Timetable attached to a letter sent by the Committee’s Clerk to the parties dated 27 July 2018, as well as repeated reminders, the Respondent did not submit the Respondent’s Case to the Committee, nor did he attend the substantive hearing of the Complaint held on 22 November 2018 (“**the Hearing**”). In the Hearing, the Committee was satisfied that the Respondent had been properly notified about these disciplinary proceedings (including the Hearing), and had deliberately not to take any part in them. With the consent of the Complainant, the Committee proceeded to hear evidence and submissions on the Complaint in the Respondent’s absence. On the basis of the evidence that was adduced before it, comprising documents contained in the hearing bundle, and the Complainant’s oral submissions during the hearing, the Committee found that the Complaint had been proven to its satisfaction, and that the Respondent had failed or neglected to observe, maintain or otherwise apply a professional standard, contrary to section 100.5(e) (as elaborated in section 150.1) of the Code of Ethics for Professional Accountants (“**the Code**”).

4. The Committee then adjourned the imposition of sanction to give the Respondent a chance to make submissions thereon, and gave directions pertaining to submissions on sanction. Subsequent to the Hearing, both parties made written submissions on sanction. After considering the written submissions, the Committee considers itself able to determine sanction without hearing oral submissions from the parties.

5. This Order and Reasons for Decision contains the Committee’s reasons for finding the Complaint proved against the Respondent, and the sanction (with reasons) that the Committee has decided to impose upon him.

## **II. The facts of the Complaint**

6. The Complaint herein arises from a report of the Market Misconduct Tribunal (“**the MMT**”) dated 27 February 2017 (“**the MMT Report**”), which was adduced by the Complainant as evidence before the Committee. The Respondent has

not contradicted or denied the factual findings contained in the MMT Report, which are therefore accepted by the Committee. These factual findings, in so far as they are material to the Complaint herein, are summarized below.

7. At all material times, the Respondent was the Financial Controller, Company Secretary, as well as Compliance Officer of a listed company called Yorkey Optical International (Cayman) Limited (stock code: 2788) (“**the Company**”).

8. In August 2012, the Company published its interim results for the period ended 30 June 2012 (“**the Interim Results**”), which showed that the Company’s revenue and net profit had decreased by 12% (from US\$54.4M to US\$47.8M) and 62% (from US\$3.3M to US\$1.25M) respectively when compared to the corresponding period in 2011. The Company, however, stated in the Interim Results that its results for the second half of 2012 were expected to have significant growth, with increasing profitability.

9. Contrary to what the Company stated in the Interim Results, instead of getting better, its financial performance for the second half of 2012 deteriorated significantly even when compared with the first half of 2012, and the Company sustained material losses during the period. According to the Company’s audited annual results for the year ended 31 December 2012 (“**the Final Results**”), which were announced on 25 March 2013:

- (a) The Company suffered from a loss before tax of US\$136,000 in 2012, compared to a profit before tax of US\$7.531M in 2011;
- (b) The Company had a net profit of US\$60,000 in 2012, after taking into account a tax credit; this represented a 99% decrease when compared to the net profit of US\$6.685M in 2011; and
- (c) The net profit for the whole year of 2012 (i.e., US\$60,000) was significantly less than that reported for the first six months of 2012 (i.e., US\$1,252,000); compared to the first half of 2012, the Company’s revenue decreased by a further 5.9%, and its gross profit margin dropped from approximately 21.2% to 18.2%.

10. The Company’s performance in the second half of 2012 was therefore materially worse than that in the first half of 2012. The Company, however, did not

issue any profit warning announcement during the period from August 2012, when the Interim Results were announced, to March 2013, when the Final Results were released. The public was therefore uninformed about the further deterioration in the Company's performance ("**the Deterioration**") until the publication of the Final Results in March 2013.

11. It is also undisputed that during the material period, the Company published consolidated management accounts on a monthly basis. The consolidated management accounts for a month would be available for review by the Chief Executive Officer ("**CEO**") of the Company by the middle of the following month. These consolidated management accounts showed that the Deterioration began in October 2012, and continued into November and December 2012. By mid-January 2013, the December 2012 consolidated monthly management accounts and the internal management accounts for the whole year of 2012 were available. No system was however in place in the Company to send the monthly management accounts to the Respondent. He only became aware of the poor performance of the Company in late February 2013, after the Company's auditor sent to him the draft consolidated financial statements for the year 2012. Even then, the Respondent had failed to take appropriate or adequate actions in relation thereto<sup>1</sup>.

### **III. The complaint against the Respondent**

12. The complaint against the Respondent, as set out in paragraph 2.1 of the letter of complaint dated 13 April 2018, is 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 of Ethics for Professional Accountants ("**Code**"), when he was found to have breached sections 307G(1), 307G(2)(a) and 307G(2)(b) of the [Securities and Futures Ordinance], thereby failing to comply with relevant laws and regulations and avoid any action that discredits the profession."

13. Section 100.5 of the Code sets out the fundamental principles that a professional accountant must comply with, viz., integrity, objectivity, professional competence and due care, confidentiality and professional behavior. Section 100.5(e) stipulates as follows:

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<sup>1</sup> See paragraphs 27 and 29 below for details.

“Professional Behavior – to comply with relevant laws and regulations and avoid any conduct that discredits the profession.”

14. Paragraph 150.1 of the Code<sup>2</sup> further elaborates the principle as follows:

“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.”

15. Section 307G of the Securities and Futures Ordinance Cap. 571 (“**the SFO**”) provides as follows:

- “(1) Every officer of a listed corporation must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement in relation to the corporation.
- (2) If a listed corporation is in breach of a disclosure requirement, an officer of the corporation—
  - (a) whose intentional, reckless or negligent conduct has resulted in the breach; or
  - (b) who has not taken all reasonable measures from time to time to ensure that proper safeguards exist to prevent the breach, is also in breach of the disclosure requirement.”

#### **IV. Why the Committee found the Complaint proved**

16. Section 307B of the SFO lays down the disclosure requirement to be satisfied by a listed corporation, as follows:

- “(1) A listed corporation must, as soon as reasonably practicable after any inside information has come to its knowledge, disclose the information to the public.

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<sup>2</sup> Version revised June 2010, effective on 1 January 2011, which was applicable at the material time.

- (2) For the purposes of subsection (1), inside information has come to the knowledge of a listed corporation if—
  - (a) information has, or ought reasonably to have, come to the knowledge of an officer of the corporation in the course of performing functions as an officer of the corporation; and
  - (b) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation.”

17. “Inside information” is defined under section 307A of the SFO, as follows:

“inside information, in relation to a listed corporation, means specific information that—

- (a) is about—
  - (i) the corporation;
  - (ii) a shareholder or officer of the corporation; or
  - (iii) the listed securities of the corporation or their derivatives; and
- (b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities”.

18. Section 307C(1) of the SFO further stipulates the manner of disclosure, as follows:

“A disclosure under section 307B must be made in a manner that can provide for equal, timely and effective access by the public to the inside information disclosed.”

19. The MMT found that information about the Deterioration, as shown by the financial figures contained in the consolidated monthly management accounts mentioned above, was inside information in relation to the Company, which ought to have been disclosed under section 307G of the SFO. The MMT’s finding in this respect was based on the followings:

- (a) The Deterioration was apparent from the relatively low turnover and the loss figures contained in the consolidated monthly management accounts for October, November and December 2012, and also from the draft consolidated financial statements provided by the auditor to the Respondent in late February 2013;
- (b) The financial information contained in the Company's internal accounts as aforesaid was information specific to the Company and not generally known to the investing public;
- (c) The financial information contained in the Company's internal accounts as aforesaid indicated that the Company was sustaining a loss in the second half of 2012. This would be a significant disappointment to those who were accustomed or would be accustomed or would be likely to deal in the shares of the Company. Had that information been made know to them, the impact on the share price of the Company was likely to be material;
- (d) The financial information contained in the consolidated management accounts from July to November 2012 would have been sufficient to give a clear indication to the investing public that the Company's performance in the second half of 2012 would be much worse than expected, and the impact of this information (had it been made public) on the share price was likely to be material.

20. The MMT found the Company to be in breach of disclosure requirement under section 307B of the SFO, for the following reasons:

- (a) A reasonable person acting as an officer of the Company would consider that information about the Deterioration as was apparent from the figures contained in the Company's internal accounts to be inside information. The information however was not disclosed to the public as soon as reasonably practicable – the public was not informed of the Deterioration until the publication of the Final Results on 25 March 2013; and

- (b) In the 13 weeks between mid-December 2012 and 25 March 2013, the investing public had been trading on a false premise that the Company had performed significantly better in the second half of 2012 as compared to the first half of 2012. The delay in the disclosure of the information about the Deterioration was in the circumstances unreasonable and unjustified.

21. The MMT found the Respondent in breach of section 307G(2)(a) of the SFO, for the following reasons:

- (a) The Respondent was well aware of the Deterioration well before the publication of the Final Results. He was aware of the risk that failure to make timely disclosure of the information about the Deterioration might result in the Company being found in breach of section 307B of the SFO. Yet, he did not take any appropriate or sufficient steps to ensure timely disclosure of information about the Deterioration to the investing public;
- (b) The failure of the Respondent to take any appropriate or sufficient steps to ensure timely disclosure of information about the Deterioration amounted to reckless conduct, in that he was unreasonably taking the risk that might result in the Company's breach of section 307B of the SFO.

22. The Respondent was further found by the MMT to be in breach of section 307G(2)(b) of the SFO, for the following reasons:

- (a) He was the Financial Controller and Company Secretary of the Company, and was responsible for ensuring the Company's compliance with its legal obligations;
- (b) He failed to set up a system to ensure that price sensitive information relating to the performance of the Company would be identified and then disclosed in a timely manner;
- (c) Despite being aware of the disclosure obligation under the "new" regulations, the Respondent did not put in place any system to ensure that price sensitive information would be disclosed in a timely manner;

- (d) He should have kept himself up-to-date with the Company's financial performance. There was no system in place whereby the consolidated monthly accounts were sent to him;
- (e) The Respondent accepted that he did not suggest to the Company's Board of Directors to issue a profit warning prior to the Final Results, nor check to see if anyone had done the same. He simply thought that there was nothing he could do in the circumstances and allowed himself to sit on the information without taking any appropriate or sufficient steps.

23. It should perhaps also be mentioned that the Respondent was not the only person investigated and sanctioned by the MMT for failure to observe the aforesaid disclosure requirement. The Company itself and its CEO were also investigated and sanctioned. The Respondent was however the only certified public accountant involved.

24. Within 3 days after the Final Results were announced on 25 March 2013, the Company's share price dropped a total of 21.25%. According to analysis conducted by an expert of the Securities and Futures Commission ("SFC"), the notional losses suffered by investors due to the delay in the Company's disclosure of the Deterioration amounted to an aggregate amount of HK\$1,528,695.

25. The Committee agrees with the MMT's findings and comments as summarized in paragraphs 19 to 22 inclusive hereinabove.

26. No explanation of his conduct has been proffered by the Respondent to the Committee. In an email to the Institute dated 5 November 2017, however, the Respondent said that:

"I informed, together with the Guidelines on Disclosure of Inside Information issued by the SFC in June 2012 ("the Guidelines"), the Board of the Company through the Company's assistant, Mr. Darcy Lee, in Taiwan about the new regulation on the price sensitive information regime that took effect from 1 January 2013. The relevant compliance system was set up and approved by the CEO of the Company on 31 March 2013 as attached."

27. Further down the same email, the Respondent stated:

“When I received the draft annual report in late February and found the deteriorating results, I immediately contacted the Company’s assistant, Mr. Darcy Lee and requested that the Board should take appropriate action according to the Guidelines including issuing the profit warning announcement. However, I learned that the Board had decided not to issue the announcement after taking the auditor’s advice. As such, I took no further action according to the Board’s decision.”

28. This is grossly insufficient, and highly undesirable. The Respondent, as the Financial Controller and Compliance Officer of the Company, ought to have *ensured*, and *insisted*, that a system was in place in the Company by which up-to-date information about the Company’s performance, including its monthly financial statements, was brought to his attention in a timely manner. Even the Company’s own financial process flowchart (精熙財務流程) shows that consolidated financial statements ought to be submitted monthly to the CEO and Financial Controller/Company Secretary *simultaneously*. It is alarming that the Respondent would have allowed the monthly financial statements to have totally bypassed him.

29. Furthermore, after eventually becoming aware of the serious deterioration of the performance of the Company in February 2013, the Respondent ought to have *ensured* and *insisted* that *immediate* disclosure be made in relation thereto. It is grossly insufficient for the Respondent to have merely “contacted the Company’s assistant”, and to have sat back and did nothing after he “learned” that the Board decided not to make any announcement. As the Company’s Compliance Officer, he owed a duty to the Company and to the public to take *immediate* and *appropriate* measures, such as seeking *direct* communication with the Board of Directors (instead of through the “Company’s assistant”), and making enquiries as to why the Board refused to make the disclosure required by law. If the result of the enquiry is unsatisfactory, he could have brought the matter to the attention of the audit committee of the Company. In the worst scenario, if everything else failed, he should consider seeking assistance from the relevant law enforcement authorities.

30. In the circumstance, the Committee was satisfied that the Respondent had breached sections 307G(1), 307G(2)(a) and 307G(2)(b) of the SFO, and that the manner in which the Respondent conducted himself as the Company’s Financial

Controller, Company Secretary and Compliance Officer had discredited the accounting profession. As the MMT rightly pointed out, certified public accountants play an important role under the listing regime. The investing public relies on the expertise and competence of professional accountants. The Respondent had simply let the public down. The Committee was also satisfied that the Respondent knew or should have known that his conduct would discredit the profession. The Committee therefore found the Complaint proved against the Respondent.

## V. Sanction

### A. The parties' submissions on sanction

31. In the written submissions of 7 December 2018, the Complainant's representative referred the Committee to the sanctions imposed by the MMT, and submitted that the Respondent's breach of professional standard is serious, as his conduct had put the profession's reputation at stake. The Complainant's representative further submitted that only a removal order, for such period as the Committee thinks fit, would suitably reflect the seriousness of the breach, and so as to maintain the profession's solid reputation and standing.

32. The Respondent did not make any representations on sanction to the Committee. In his email to the Institute of 21 December 2018 (which was forwarded by the Institute to the Committee), he merely made representations on costs, which will be dealt with in a later part of this Order and Reasons for Decision. The Committee notes that in fact, vide an email to the Institute of 6 March 2018, the Respondent had asked for cancellation of his membership with the Institute with immediate effect. The request was however declined because of the current ongoing disciplinary proceedings.

### B. The Committee's consideration of and decision on sanction

33. The Committee agrees that the breach by the Respondent is serious. In essence, he had wholly ignored and disregarded the duties and responsibilities associated with his position as the Company's Financial Controller and Compliance Officer. He was appointed in these positions no doubt because of his professional background as an accountant. His conduct amounted to a serious breach of the trust and confidence entrusted upon him by the public and shareholders of the Company, and of the duties imposed by statute.

34. The Committee further agrees that a removal order under section 35(1)(a) of the Ordinance is appropriate. After taking into account the degree of seriousness of the breach, the Committee considers a removal period of 12 months to be fair and reasonable. The Committee therefore orders that the name of the Respondent be removed from the register for a period of 12 months.

## **VI. Costs**

35. The Complainant asks for the costs and expenses of and incidental to the proceedings of the Institute, in the sum of HK\$44,756.00, as well as the costs and expenses of the Committee, in the sum of HK\$4,140.00 (total HK\$48,896.00).

36. In his aforesaid email of 21 December 2018, the Respondent requested the Institute to grant him a waiver of costs, for the reason that he was in a worsening financial status caused by long term unemployment since 1 March 2017. In the Complainant's representative's letter of reply dated 24 December 2018, the Respondent's said request was in effect turned down. The Complainant submitted that all costs of the Institute's disciplinary proceedings are funded solely by its members, and that the Institute receives no financial assistance from the Government therefor. If the costs were considered to be reasonable, there is no justification for the Committee to waive those costs, so the Complainant's representative said. The Complainant's representative further suggested that the Respondent provides his financial information to the Institute's Finance Department, which would assess the appropriate repayment terms when seeking recovery of costs in due course.

37. In response to the Complainant's representative's letter of 24 December 2018, the Respondent, by an email of 21 January 2019, requested that the costs be settled by 12 monthly instalments.

38. The Committee considers that, in the absence of consent by the Institute, there is no reason why the Respondent should not be ordered to pay costs. The costs incurred for the preparation of complaint documents and correspondence, corresponding to a total of 50 chargeable hours by various personnel of the Institute (item B1 of the Statement of Costs) however seems excessive. Adopting a broad-brush approach, costs under this item is reduced from HK\$36,400 to HK\$20,000. The

Committee therefore orders the Respondent to pay the Institute costs pursuant to section 35(1)(iii) of the Ordinance, in the total sum of **HK\$32,496.00**.

39. The Ordinance does not seem to empower the Committee to order the payment of costs by instalments. The Committee therefore does not make any order in that respect. The Respondent is advised to approach the Institute's Finance Department to discuss mutually acceptable arrangements. It is hoped that the Institute could be sympathetic to the Respondent's personal situation.

40. This order shall take effect on the 42<sup>nd</sup> day from the date of this order.

Dated 1st April 2019

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Lam Ken Chung Simon  
Chairman  
Disciplinary Panel A

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Chan Fung Cheung  
Member  
Disciplinary Panel A

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Wong Yue Ting Thomas  
Member  
Disciplinary Panel B

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Vincent Chin  
Member  
Disciplinary Panel A

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Fung Ying Wai Wilson  
Member  
Disciplinary Panel B