

IN THE MATTER OF

A Complaint made under section 34(1A) of the Professional Accountants Ordinance (Cap. 50) (the “**PAO**”)

BETWEEN

The Registrar of the Hong Kong Institute
of Certified Public Accountants

COMPLAINANT

AND

Wong On Yee (A21296)

1st RESPONDENT

CWC CPA Limited (M0432)

2nd RESPONDENT

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

Members: Mr. WONG Kit Hin, Peter (Chairman)
Ms. HO Man Kay, Angela
Dr. CHAN Fung Cheung, Wilson
Ms. TANG Yuen Yee, Loren Gertrud
Mr. SO Kwok Kay

ORDER AND REASONS FOR DECISION

1. This is a complaint made by the Registrar (the “**Complainant**”) of the Hong Kong Institute of Certified Public Accountants (the “**Institute**”) against Wong On Yee, a practising certified public accountant (the “**1st Respondent**”) and CWC CPA Limited, a corporate practice (the “**2nd Respondent**”) (collectively the “**Respondents**”).
2. The particulars of the Complaint as set out in a letter from the Registrar to the Council of the Institute dated 11 March 2020 (the “**Complaint**”) are as follows:

BACKGROUND

- (1) W. Falcon Asset Management (Asia) Limited (“**Company**”) was a licensed corporation under Hong Kong Securities and Futures Ordinance (“**SFO**”) to carry on regulated activities from June 2014 to July 2017. The principal activities of the Company were provision of investment dealing and advisory services.
- (2) In July 2017, the Securities and Futures Commission (“**SFC**”) issued a restriction notice to prohibit the Company from carrying on any regulated activities. Following an investigation, SFC revoked the licence of the Company in February 2019 and issued a Statement of Disciplinary Action against the Company (“**Statement**”).
- (3) According to the Statement, the SFC found that the Company window-dressed its liquid capital reported in its monthly financial returns. It was found that certain personal cheques the Company received from a director of the Company were dishonoured on the first business day after the end of the month. The SFC pointed out that, had the amounts of these cheques been excluded from the bank balances, the Company would have had a liquid capital deficit at the time of its licence application and a liquid capital deficit for each of those dates for 3 years from June 2014. As a result, they would have been denied a licence to carry on regulated activities.
- (4) The 2nd Respondent was the auditor of the Company for the years ended 31 March 2015, 2016 and 2017. The 2nd Respondent also issued compliance reports (“**Compliance Reports**”) for these years for the Company’s submission to the SFC. The 1st Respondent was the engagement director responsible for the annual audits and compliance reporting for the three years.
- (5) In their auditor’s reports, the 2nd Respondent stated that they conducted the audits in accordance with Hong Kong Standards on Auditing (“**HKSA**”) and with reference to Practice Note 820 (Revised) *The Audit of Licensed Corporations and Associated Entities of Intermediaries* (“**PN 820**”). The 2nd Respondent expressed a true and fair view on the state of affairs of the Company as at the year-end dates of the relevant years and on its loss and cash flows for the years then ended.
- (6) In the Compliance Reports, the 2nd Respondent stated that they conducted their engagement in accordance with Hong Kong Standard on Assurance Engagements 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (“**HKSAE 3000**”) and with reference to PN 820. They stated that, inter alia, the Company was subject to the licensing condition that it should not hold client assets and they were not aware of any instances where the Company had contravened the Securities and Futures (Financial Resources) Rules (“**FRR**”).

COMPLAINTS

- (7) Complaint 1: Section 34(1)(a)(vi) of the PAO applies to the 1st Respondent and the 2nd Respondent (by virtue of section 34(1AA)) in that they have failed or neglected to observe, maintain or otherwise apply professional standards in their audits of the Company's 2016 and 2017 financial statements.
- (8) Complaint 2: Section 34(1)(a)(vi) of the PAO applies to the 1st Respondent and the 2nd Respondent (by virtue of section 34(1AA)) in that they have failed or neglected to observe, maintain or otherwise apply a professional standard in their compliance reporting for 2015, 2016 and 2017.
- (9) Complaint 3: Section 34(1)(a)(ix) of the PAO applies to the 1st Respondent and the 2nd Respondent (by virtue of section 34(1AA)) in that they had refused or neglected to comply with the provision of rule 8 of the Corporate Practices (Registration) Rules ("CPRR") for their failure to state the name of the practising director responsible for the audits and her practising certificate number in the auditor's reports on the 2015 and 2016 financial statements.
- (10) Complaint 4: Section 34(1)(a)(viii) of the PAO applies to the 1st Respondent and the 2nd Respondent (by virtue of section 34(1AA)) in that they have been guilty of professional misconduct due to the multiple non-compliances identified in the audits and compliance reporting.

FACTS AND CIRCUMSTANCES IN SUPPORT OF THE COMPLAINTS

Complaint 1

A. Dishonoured cheques

- (11) The Respondents' audit working papers recorded that the bank balances as of 31 March 2016 and 2017 had been checked against the Company's ledger, bank statements and bank confirmations obtained from banks.
- (12) In their subsequent events review, which included reviewing the Company's cash and bank balances after the year-end dates, the Respondents documented that the Company's bank statements subsequent to the year-end dates had been reviewed and no unusual fund transfers or signs of significant events were identified.
- (13) As recorded in the bank passbook / bank statements of the Company, there were cheques which had been deposited before the year-end dates in 2016 and 2017, and dishonoured on the first business day after the year-end dates, and they are summarised below:-

<u>Date</u>	<u>Description</u>	<u>Amount (HK\$)</u>
<u>Dah Sing Bank Saving A/C no. 7470217667</u>		
31-3-2016	NCQ (No Book Deposit Cheque)	3,425,000.00
1-4-2016	NRQ (No Book Returned Cheque)	(3,425,000.00)
<u>Dah Sing Bank Current A/C no. 74-301-8019-4</u>		
31-3-2017	Dep clearing cheque	44,056.83
31-3-2017	Dep clearing cheque	500,000.00
31-3-2017	Dep clearing cheque	3,430,000.00
3-4-2017	Returned cheque debit	(44,056.83)
3-4-2017	Returned cheque debit	(500,000.00)
3-4-2017	Returned cheque debit	(3,430,000.00)

- (14) Had the above dishonoured cheques been excluded from the Company's year-end bank balances in the financial statements, the bank balances would be significantly reduced:

	<u>Amount (HK\$)</u>
As at 31 March 2016	
Reported cash and bank balances	4,537,688.29
Less: Cheque returned	(3,425,000.00)
Bank balance excluding the returned cheque	<u><u>1,112,688.29</u></u>
As at 31 March 2017	
Reported cash and bank balances	3,514,428.00
Less: Cheques returned	(44,056.83)
	(500,000.00)
	(3,430,000.00)
Bank balance (overdraft) excluding the returned cheques	<u><u>(459,628.83)</u></u>

- (15) In addition to the above instances, there was also a pattern of unusual transactions before and after March 2016 and March 2017. In 2016, there were multiple depositing and returning of the same amount of HK\$3,425,000 as at and subsequent to the month-end dates in January, February, April, May and June 2016. In 2017, substantial amounts were also deposited at the month-end and then returned (dishonoured) at the beginning of next month. This occurred in the month-end of January, February and May 2017.
- (16) The Respondents sought to defend their audit work by claiming to have carried out of bank statement reviews but not discovering any other dishonoured cheques during the audits, except for a cheque in the amount of HK\$3,425,000 deposited by the Company on 31 March 2016 and returned by the bank on 1 April 2016. The Respondents asserted that they had enquired with management about the return and was told that the amount was eventually deposited to the bank on 29 April 2016.

- (17) The aforementioned cheque deposited to the bank on 29 April 2016 was apparently returned again on 3 May 2016, the next business day. It formed part of a pattern of the sum being deposited at the month-end and then returned (dishonoured) at the beginning of the next month. In any event, the explanations in the preceding paragraph regarding the dishonoured cheque of HK\$3,425,000 and the relevant enquiry with management had not been contained in the Respondents' working papers.
- (18) Even if the aforementioned enquiry with management was carried out (in 2016), the Respondents demonstrated inadequate consideration on the issue identified. The Respondents should have performed further audit procedures in relation to the dishonoured cheques (in 2016 and 2017), including inquiring into the reason(s) for their return/dishonour, and the purpose(s) and/or payer(s) of those payments, in determining if the dishonoured cheque(s) should have been excluded from the Company's year-end bank balances, and whether a corresponding adjustment should have been made in the financial statements.

B. Unreconciled bank balance

- (19) As at 31 March 2017, the balance of one of the Company's current accounts at Dah Sing Bank as shown in the Respondents' working papers did not agree with the amount confirmed in the bank confirmation as follows:

▪ *Per audit working paper:*

<u>Current account</u>	<u>Account no.</u>	<u>HK\$</u>
DS C/A	#74-301-8019-4	3,497,696

▪ *Per bank confirmation:*

<u>Account no.</u>	<u>Balance</u>
74-301-8019-4	HK\$14,585,224.03(CR)

- (20) Notwithstanding the above mentioned difference in the bank balance, the Respondents' working paper documented that "Bank confirmation received and agreed." It was also stated in their audit programme that no reconciliation was needed.
- (21) The Respondents maintained in their submissions to the Institute that "[n]o difference was identified" and provided the following reconciliation of bank balances between the Company's records and the bank confirmation as at 31 March 2017, which was not documented in their working papers, to substantiate their submission:

	<u>Amount</u> (HK\$)
Balance per bank confirmation:	
Current account no. 74-301-8019-4	14,585,224
Current account no. 74-301-9913-3	10,870,492
	<hr/> 25,455,716
<u>Less: Clients' money account</u>	<u>(21,958,020)</u>
Bank balance per working paper	<u><u>3,497,696</u></u>

- (22) The reconciliation above clearly reflected that there was difference in the Company's bank balance, although the Respondents inappropriately concluded that there was no difference.
- (23) As a result, in respect of their audits of the Company's bank balances, Respondents had failed to:
- (a) maintain a questioning mind and be alert that the dishonoured cheque(s) as shown in the Company's bank book and statements, and the unreconciled bank balance might be circumstances causing misstatements in financial statements, in accordance with paragraph 15 of HKSA 200 *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Hong Kong Standards on Auditing*;
 - (b) critically evaluate the inconsistent audit evidence obtained, the potential implications thereon and adjustments to be made, in accordance with paragraph 11 of HKSA 500 *Audit Evidence* and paragraphs 6, 8 and 10 of HKSA 560 *Subsequent Events*; and
 - (c) prepare audit documentation regarding the matters which they allege they carried out as set out in paragraphs (16) and (21) above in accordance with paragraphs 8, 10 and 11 of HKSA 230 *Audit Documentation*.

Complaint 2

A. Lack of work performed on liquid capital

- (24) The Company, as a licensed corporation, was required to maintain a minimum liquid capital of HK\$3 million at all time under the FRR. As the auditor of the Company, the Respondents issued the Compliance Reports which addressed the Company's compliance with relevant requirements.
- (25) HKSAE 3000 requires the engagement partner to plan and perform an engagement in compliance with applicable professional and legal/regulatory requirements. It also requires that the engagement partner shall maintain professional skepticism and consider the reliability of the information to be used as evidence.
- (26) Paragraphs 80 and 81 of PN 820 set out the general guidance for an auditor to fulfil his responsibilities which include having particular regard to the relevant requirements of the SFC in force.
- (27) Paragraphs 102 to 104 of PN 820 provide further requirements on steps to be taken by the auditor, in particular when the licensed corporation is operating at a level close to the minimum requirement. Those steps include reviewing and testing a larger sample for FRR compliance if the licensed corporation has very low excess liquid capital, and attaching reconciliations or

explanations for differences to their compliance reports if the auditor expresses a qualified opinion. Paragraphs 64 to 66 of HKSAE 3000 set out the requirements for the auditor in respect of forming an assurance conclusion.

- (28) Based on the monthly financial returns filed by the Company with the SFC, the Company's liquid capital amounts as at 31 March 2015, 2016 and 2017 were HK\$3.9 million, HK\$4.4 million and HK\$4.5 million respectively. However, the balances of liquid capital for 2016 and 2017 should have been reduced by the amounts of the dishonoured cheques. Consequently, the Company's liquid capital as at 31 March 2016 and 2017 should be HK\$1 million and HK\$0.5 million respectively, which would have been significantly below the minimum required amount (HK\$3 million). As such, the Company breached the minimum requirement on liquid capital under the FRR.
- (29) Given that the Respondents expressed an unqualified conclusion in the Compliance Reports stating, inter alia, that they were not aware of any instances where the Company had contravened the FRR, it is reasonable to expect that they must have performed procedures to obtain sufficient evidence to support their conclusions. However, there is no evidence in any of the Respondents' working papers documenting any review or test procedures performed on the Company's liquid capital.
- (30) The Respondents asserted they found that all liquid capital stated in the Company's management accounts was in agreement with month-end bank statements based on results of the following procedures, which were performed to ensure that the Company's liquid capital met the minimum requirements:
- (a) verify whether the Company's opening and closing balances of liquid capital were at least HK\$3,000,000;
 - (b) test check the opening and closing liquid capital balances to supporting evidence; and
 - (c) check management accounts where either the opening and closing balances of liquid capital was close to the minimum.
- (31) The assertions in the preceding paragraph did not contain any details of the alleged procedures, and were not documented in any working papers in accordance with paragraph 79 of HKSAE 3000.
- (32) Further, the Respondents' submission that the Company's liquid capital "stated in the management accounts" agreed to month-end "bank statements" shows that:
- (a) the Company's month-end bank balances had been mistakenly taken as its month-end liquid capital; and

- (b) the Company's liquid capital "stated in the management accounts", rather than that stated in the Company's financial returns, was said to have been tested.
- (33) The Company's monthly financial returns show that liquid capital included bank balances and other assets and liabilities, and the reported balances were different from the Company's corresponding month-end bank balances. This, together with the observations in the preceding paragraph, cast doubt on whether the Respondents had carried out procedures as claimed.
- (34) The Respondents also submitted that they recognised the possibility of material misstatement due to fraud and, accordingly, had maintained professional scepticism throughout the engagements. However, the Respondents' submission is not evident from any of their working papers, especially in light of the fact that they did not investigate the incident of dishonoured cheques and their impact on compliance reporting.
- (35) The Respondents should have qualified the Compliance Reports for the years 2016 and 2017 and provide the SFC with an explanation or reconciliation, in accordance with paragraphs 80, 81, 102, 103 and 104 of PN 820.
- (36) Based on the above, the Respondents failed:-
 - (a) to plan and perform the work on the Company's liquid capital for the three years concerned, maintain a questioning mind in respect of the Company's dishonoured cheques, and determine what changes or additions to procedures are necessary to resolve dishonoured cheque(s) for the years 2016 and 2017, in accordance with paragraphs 33(b), 37 and/or 50 of HKSAE 3000; and
 - (b) to qualify the Compliance Reports for the years 2016 and 2017 and provide the SFC with an explanation or reconciliation, in accordance with paragraphs 80, 81, 102, 103 and 104 of PN 820. Therefore, the Respondents failed to comply with paragraphs 64 to 66 of HKSAE 3000.

B. Deficiencies in compliance reporting in relation to client money

- (37) For the purpose of compliance reporting, an auditor shall report on whether the licensed corporation had:
 - (a) systems of control in place that were adequate to ensure compliance with the relevant requirements in respect of client money under Securities and Futures (Client Money) Rules ("CMR"); and
 - (b) complied with the relevant requirements under the CMR.
- (38) Paragraph 82 of PN 820 states that the auditor should consider factors which include the scope of licensing in relation to the holding of client assets and modifications or waivers granted or special conditions imposed by the SFC.

- (39) Paragraph 108 of PN 820 sets out the general requirements for the auditor's consideration when determining the extent and nature of their work on client assets. Auditors shall plan and perform their work based on which they can conclude that the regulated entity has complied with the requirements. Paragraph 107 of PN 820 sets out the 2 essential aspects to the auditor's reporting responsibilities – whether the entity had systems of control in place, and whether the entity complied with the relevant rules.

Failure to plan and perform work on client money

- (40) The Company's Statements of Financial Position as at 31 March 2016 and 2017 showed that the Company held HK\$27,546 and HK\$21,958,020 as "Cash at banks – client's accounts" (i.e. client money) at the respective year-end date. However, the Compliance Reports did not contain a conclusion on whether the Company had adequate control in place and had complied with the relevant rules regarding clients' money held.
- (41) There is not any working papers recording any plan or procedure for evaluating if the Company had (a) adequate system of control in place to enable compliance with the relevant rules under CMR; and (b) complied with those rules.
- (42) The Respondents claimed that they had enquired with management about the procedures and systems in place to ensure all client money was kept separately and paid in compliance with the relevant requirements under CMR. They also claimed that they had performed sample testing to establish whether the controls and procedures were operated effectively and adequately.
- (43) The steps purportedly taken by the Respondents were not documented in any working papers. The Respondents did not provide any details about their purported enquiry or sample testing of the Company's controls and procedures. In the absence of such details, there is no evidence to demonstrate how or if the Respondents had carried out the steps as claimed.

Failure to identify and report the Company's mixing up of its own money with client money

- (44) Pursuant to rule 4 of the CMR, the Company should maintain a segregated bank account designated as a trust account or client account for holding only client money.
- (45) It is not evident from any working papers if any procedures were performed on ascertaining whether the client account held only client money.
- (46) As at 31 March 2017, the Company's record of the current account balance (HK\$3,497,696) did not match with the amount confirmed by the bank (HK\$14,585,224).

- (47) The Respondents' explanation and reconciliation made in their letter of 5 September 2019 indicated that HK\$11,087,528 in the Company's current account was re-classified to the Company's client account. This reflected that the Company's current account indeed included both the Company's own money and client money. The Company's mixing up of its money with client money in its bank account constituted a contravention of section 4 of the CMR which should be reported as a contravention in the Respondents' 2017 Compliance Report.
- (48) The Respondents claimed to have performed the following test procedures in relation to client money:
- (a) sample testing on (i) payments of client money into or out of client's account; (ii) reconciliations between the total balance of client money to the balances due to each client at month-end; (iii) bank reconciliation for client account; and (iv) transactions from bank statements and client account;
 - (b) reviewing the client account for the whole period for potentially unusual items; and
 - (c) obtaining bank confirmations to confirm client money balance at banks.
- (49) Except for the obtained bank confirmations (which was one of the procedures for auditing bank balances), none of the test procedures in the preceding paragraph had been contained in any of their working papers.

Erroneous statement in the Compliance Reports

- (50) The Respondents stated in each of their Compliance Reports that the Company was subject to the limiting condition that it should not hold client assets. However, the licence issued to the Company by the SFC on 12 June 2015 reflected that the licensing condition was removed. Hence the Respondents' statement about the limiting condition in each of their Compliance Reports for 2016 and 2017 was erroneous. The Respondents failed to consider the scope of the licensing condition including any modification or waivers granted, as required by paragraph 82 of PN 820.
- (51) Based on the findings in the above areas, the Respondents failed to plan and perform their work on the Company's client money and failed to report if the Company had complied with the relevant requirements under the CMR, as required by paragraphs 82, 107 and 108 of PN 820. Therefore, the Respondents failed to comply with paragraphs 33(b) and/or 50 of HKSAE 3000.

Complaint 3

- (52) Under rule 7 of the CPRR, an audit report issued by a corporate practice shall be signed by a director of the corporate practice who is a practising member. Under rule 8, a corporate practice shall identify the engagement director responsible for the audit in the auditor's report issued.
- (53) The auditor's reports issued by the 2nd Respondent for the years 2015 and 2016 did not identify the responsible engagement director. The 2nd Respondent replied that the engagement director for the audits was the 1st Respondent.
- (54) Therefore, section 34(1)(a)(ix) of the PAO applies to the 1st Respondent and the 2nd Respondent (by virtue of section 34(1AA)) because the 2nd Respondent and/or the 1st Respondent did not comply with rule 8 of the CPRR due to their failure to identify the 1st Respondent in the auditor's reports in question.

Complaint 4

- (55) Due to the Respondents' breaches of various professional standards as stated above, they are guilty of professional misconduct under section 34(1)(a)(viii) of the PAO.

THE PROCEEDINGS

3. By letters signed by the parties dated 24 April 2020, the Respondents admitted the Complaint against them, and the parties requested that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules ("DCPR") be dispensed with.
4. The Disciplinary Committee agreed with the parties' request to dispense with the steps set out in Rules 17 to 30 of the DCPR in light of the admission made by the Respondents, and directed the parties to make written submissions on sanctions and costs.
5. The Respondents and the Complainant made submissions on sanctions and costs by letters dated 6 July 2020 and 9 July 2020 respectively.
6. 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 Respondents' personal circumstances, and the conduct of the Complainant and the Respondents throughout the proceedings.

SANCTIONS AND COSTS

7. The Disciplinary Committee ORDERS that:-
- (a) the 1st Respondent and 2nd Respondent be reprimanded under section 35(1)(b) of the PAO;
 - (b) the 1st Respondent and 2nd Respondent do pay jointly and severally a penalty of HK\$200,000 under section 35(1)(c) of PAO;
 - (c) the practising certificate issued to the 1st Respondent be cancelled with effect from 42 days from the date hereof under section 35(1)(da) of the PAO;
 - (d) A practising certificate shall not be issued to the 1st Respondent for 12 months with effect from 42 days from the date hereof under section 35(1)(db) of the PAO; and
 - (e) the 1st Respondent and 2nd Respondent do pay jointly and severally the costs and expenses of and incidental to the proceedings of the Complainant, including the costs of the Disciplinary Committee, in the sum of HK\$73,428 under section 35(1)(iii) of the PAO.

Dated the 24th day of August 2020

Mr. WONG Kit Hin, Peter
(Chairman)

Ms. HO Man Kay, Angela
(Member)

Ms. TANG Yuen Yee, Loren Gertrud
(Member)

Dr. CHAN Fung Cheung, Wilson
(Member)

Mr. SO Kwok Kay
(Member)