

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

Chan Bing Chung
Membership No. A17643

1st RESPONDENT

Chan Wai Ling
Membership No. A03188

2nd RESPONDENT

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

Members: Ms. Lam Ding Wan Catrina (Chairman)
Ms. Chan Lai Yee
Ms. Chang See Mun Lily
Mr. Ip Chiu Yin Eddie
Mr. Li Po Ting Peter

Date of Hearing: 6 December 2018

Date of Reasons for Decision: 18 January 2019

Date of Order: 25 July 2019

ORDER

Section A – INTRODUCTION

1. The complaints against the 1st Respondent, Mr Chan Bing Chung ("**Mr Chan**") and the 2nd Respondent, Ms Chan Wai Ling ("**Ms Chan**") in this case related to breaches of financial reporting standards and auditing irregularities in the consolidated financial statements of a listed company, South Sea Petroleum Holdings Limited ("**Company**"), and its subsidiaries (collectively, "**Group**") for the year ended 31 December 2013 ("**2013 Financial Statements**") in respect of a sale transaction in which the Company's wholly owned subsidiary, Global Select Limited ("**GSL**"), sold 33.45 million metric

tons of graphite ore to a customer (“PML”) at US\$7.90 per metric ton, totalling US\$264,255,000 (“Transaction”).

2. Mr Chan was at all material times the sole proprietor of JP Union & Co (“JP Union”). JP Union was the auditor of the Company for the 2013 Financial Statements. Ms Chan was appointed as an external engagement quality control reviewer (“EQCR”) for the audit.
3. The complaints against the Respondents (“Complaints”) are set out below:

(1) First Complaint

Section 34(1)(a)(vi) of the Professional Accountants Ordinance (“PAO”) applies to Mr Chan and JP Union in that, in the audit of the 2013 Financial Statements, they failed or neglected to observe, maintain or otherwise apply one or more of the following professional standards in the manner as set out in paragraph 39 of the Complaint:

- (a) 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* (“HKSA 200”); and/or
- (b) Paragraph 18 of the HKSA 540 *Auditing Accounting Estimates Including Fair Value Accounting Estimates, and Related Disclosures* (“HKSA 540”); and/or
- (c) Paragraphs 16 and 21 of the HKSA 260 *Communication with Those Charged with Governance* (“HKSA 260”); and/or
- (d) Paragraphs 11 to 13 of HKSA 700 *Forming an Opinion and Reporting on Financial Statements* (“HKSA 700”).

(2) Second Complaint

Section 34(1)(a)(vi) of the PAO applies to Mr Chan in that the non-compliances with professional standards in the audit mentioned in the First Complaint indicate that he failed to conduct the audit with professional competence and due care and was in breach of section 100.5(c) as elaborated in section 130.1 of the Code of Ethics for Professional Accountants (“COE”).

(3) Third Complaint

Section 34(1)(a)(iv) of the PAO applies to Mr Chan in that, in issuing the auditor’s report for the 2013 Financial Statements as the sole proprietor responsible for the audit, he failed or neglected to observe, maintain or otherwise apply paragraphs 7 and/or 19 of HKSA 220 *Quality Control for an Audit of Financial Statements* (“HKSA 220”) because he had failed to ensure that the EQCR appointed was independent of the audit team and, further, he had failed to discuss significant matters with the EQCR.

(4) Fourth Complaint

Section 34(1)(a)(vi) of the PAO applies to Ms Chan in that she failed or neglected to observe, maintain or otherwise apply professional standards, namely (i) paragraph 20 of HKSA 220; and/or (ii) section 100.5(c) as elaborated in section 130.1 of the COE for her failure to act competently and diligently in accordance with professional standards when carrying out the work, as an engagement quality control reviewer, in the audit of the 2013 Financial Statements.

4. Mr Chan denied each of the First to Third Complaints. However, he did not appear at the substantive hearing of the disciplinary proceedings that took place before the Disciplinary Committee (“Committee”) on 6 December 2018. Having been satisfied that Mr Chan had been given proper notice of the substantive hearing, the Committee proceeded to hear the Complaints in his absence.
5. Ms Chan admitted to the Fourth Complaint by a written confirmation dated 14 March 2018.
6. Following the substantive hearing, and having considered all the submissions and evidence presented by the parties, the Committee found the First to Third Complaints proved as against Mr Chan and the Fourth Complaint proved as against Ms Chan.
7. The Committee’s findings of facts and reasons are set out in the Reasons for Decision dated 18 January 2019 (“Decision”). This decision on sanctions and costs should be read together with the Decision.
8. Pursuant to the Committee’s directions, the Registrar of the Hong Kong Institute of Certified Public Accountants (“Complainant”) and Mr Chan provided their submissions on sanctions and costs on 4 February 2019 and 25 February 2019 respectively.
9. By an e-mail dated 26 February 2019, Ms Chan informed the Committee that she has nothing to add by way of submissions and will accept the Committee’s final decision.

Section B - SANCTIONS

10. The Committee notes that it is not bound by the decisions of a previous committee. Each case is fact specific. It is for the Committee to determine the appropriate penalty bearing in mind the specific features of each case.
11. Nevertheless, to assist the Committee in exercising its discretion, the Complainant has referred to four past decisions with similar features to the present case, namely, Proceedings Nos. D-14-0974F (3 February 2016), D-16-1134H (12 October 2016), D-15-1095F (17 May 2017) and D-14-0988F (12 September 2016).
12. D-14-0974F is a previous disciplinary case against Mr Chan. In that case, Mr Chan was found to have failed to maintain professional knowledge or skill and/or failed to act

diligently as the EQCR for the audit performed by KM Choi & Auyeung Ltd of the financial statements of a listed company, Sing Lee Software Group Ltd, and its subsidiaries for the year ending 31 December 2009. In particular, Mr Chan had failed to identify that the measurement and recognition of a share option in the audit did not comply with International Financial Reporting Standards 2 (“IFRS 2”). The committee stated at paragraphs 32 and 33 of the decision that the arguments raised by Mr Chan throughout the proceedings, the hearing and even after the hearing were “*either irrelevant, speculative or unauthoritative*” and showed “*his lack of understanding of IFRS 2*”.

13. Mr Chan was ordered to pay a penalty of HK\$50,000 and his practising certificate was cancelled for 9 months. In arriving at the sanction, the committee took into account, among other matters, Mr Chan’s conduct throughout the proceedings, and his lack of understanding of the relevant accounting standards and principles. Mr Chan’s appeal on liability and sanctions was dismissed by the Court of Appeal¹ who noted that the committee was “*unimpressed by his responses that evolved over time, which display[ed] a degree of lack of candour in responding to his professional governing body*”, and concluded that there was nothing to warrant intervention with the committee’s determination of sanctions.
14. In D-16-1134H, the respondent was the engagement partner for the audit of a listed company. The audit involved non-compliances with accounting standards covering depreciation, fair value measurements and determination of the weighted average number of shares. The respondent admitted he had misinterpreted the accounting standards, failed to advise the engagement team to perform necessary audit procedures, and agreed he should have performed additional audit work. The respondent also admitted to the complaints made against him. The committee reprimanded the respondent and ordered him to pay a penalty of HK\$60,000, as well as the cancellation of his practising certificate for about 14 months.
15. D-15-1095F involved various auditing deficiencies in the impairment assessments in a listed audit. The corporate practice and engagement director faced complaints of (a) failing to observe, maintain or apply auditing standards (b) failing to ensure someone with sufficient and appropriate experience and authority to act as EQCR had been appointed in breach of §19(a) of HKSA 220 and (c) failing to conduct their professional work with competence and due care in breach of §§100.5(c) and 130 of COE. The EQCR faced a complaint for failing to perform the engagement quality control review adequately in breach of §20 of HKSA 220. The respondents admitted to the complaints. All three respondents were reprimanded and penalties of HK\$80,000, HK\$50,000 and HK\$60,000 were imposed on the corporate practice, the engagement and the EQCR respectively.
16. D-14-0988F involved the failure in a listed audit to separately account for the embedded call options of two convertible bonds at initial recognition and subsequent measurement at fair values, resulting in an understatement of the reported loss by HK\$1.5 million (24%). The EQCR admitted to the complaint that he had failed to evaluate the accounting treatment of the convertible bonds in breach of §§20, 21 and A28 of HKSA 220. The EQCR was reprimanded and ordered to pay a penalty of HK\$50,000.

¹ CACV 47/2016, 19 March 2018, at §§35.2 and 35.3.

17. The Complainant submitted that a cancellation of Mr Chan's practising certificate for a period of not less than 2 years would be appropriate in the circumstances of this case. As to Ms Chan, the Complainant submitted that her breach is less serious and the appropriate sanction for her would be a reprimand and a financial penalty.
18. Mr Chan has not made any submissions on the previous decisions referred to by the Complainant, save for the previous disciplinary case against him in D-14-0974F, which is dealt with below. However, Mr Chan suggested that there should be no cancellation of his practising certificate for 2 years if he does not take up any listed audits, as he no longer has listed clients in any event.
19. In his written submissions, Mr Chan made numerous, wide-ranging contentions, many of which are speculative and/or do not go to mitigation or the sanctions to be imposed. As such, we do not consider it necessary or indeed helpful to set out each and every argument raised, save to summarise as follows.
20. First, Mr Chan asserted that he did not lack understanding of the requirements of the relevant accounting standards by essentially maintaining that the trade receivable in question was a current asset and therefore the discount of time value under HKAS 18 was not applicable. Further, Mr Chan repeated his arguments as to why he had not failed to ensure the EQCR was independent of the audit engagement team, emphasising that Ms Chan's independence was assured as her review of the audit files was "additional work done only" and could have been "skipped".
21. The Committee has already rejected these arguments for the reasons detailed in the Decision. As stated in §§28 and 54 of the Decision, the Committee takes the view that Mr Chan's arguments demonstrate his lack of understanding of not only the requirements of the relevant accounting standards, but also the role of an EQCR.
22. Second, Mr Chan asserted that the Company's audit files for the year ending 31 December 2013 had been subject to a practice review in June 2014 but no non-compliance of accounting standards was found by the review team. As such, Mr Chan contended that he was competent. Mr Chan further complained that the Financial Reporting Council ("FRC") investigated into the matter again after the practice review concluded.
23. Mr Chan's assertion is not correct. According to a letter dated 7 July 2015², the Hong Kong Institute of Certified Public Accountants ("Institute") had specifically pointed out that the practice review committee had expressed "serious concerns" over shortcomings in the "2013 audit of Client A, a listed entity", being the Company, and informed Mr Chan that it had decided to refer the matter to the FRC pursuant to the memorandum of understanding between the FRC and the Institute. By a further letter dated 21 October 2016³, the Institute reiterated to Mr Chan that the matter that had been referred to the FRC in relation to the Company was still under review, notwithstanding the completion of the practice review. In other words, the practice review committee did not reach a conclusion that was no non-compliance with auditing standards in

² Annexed to Mr Chan's submissions as Appendix V.

³ Annexed to Mr Chan's submissions as Appendix IV.

respect of the 2013 audit of the Company. On the contrary, it had expressed “serious concerns” over the 2013 audit and referred the matter to the FRC for investigation. There was no “double investigation” as suggested by Mr Chan.

24. As explained in §§5 and 6 of the Decision, the Complaints were lodged against Mr Chan and Ms Chan following a referral by the FRC, who had in turn been referred by the practice review committee. Following the practice review committee’s referral, the FRC directed the Audit Investigation Board to conduct an investigation into the matter, who made a number of findings which formed the basis of the Complaints. As such, there is no unfairness arising from the FRC’s investigation into the Company’s 2013 audit and the Committee is not precluded from finding the Complaints proved on the evidence placed before it, notwithstanding the fact that the Company’s audit files for the year ending 31 December 2013 had been subject to a practice review.
25. Third, Mr Chan referred to another previous disciplinary case against him (D-14-892H) which also involved the audit of the Company. The committee in that case eventually dismissed the complaint against Mr Chan. We do not see how the fact that a different complaint against Mr Chan had been dismissed by another committee on a previous occasion serves to mitigate the present Complaints.
26. Fourth, various arguments were advanced as to why the contentions Mr Chan had raised in D-14-0974F were not “irrelevant, speculative or unauthoritative” as had been found by the committee in that case. He also alleged he was “framed” by his former colleague, treated as a “scapegoat” and the sanctions imposed on him were disproportionate. As stated above, Mr Chan’s appeal against liability and sanctions in D-14-0974F had been dismissed by the Court of Appeal, who did not disturb any of the findings made by the committee in that case. Mr Chan is therefore bound by those decisions.
27. Finally, Mr Chan made submissions on his personal circumstances, including the fact that the profit he personally gained from the audit in question was relatively low, he suffered mental distress for years as a result of the investigations made against him, he is currently unemployed with no income, and he is a hardworking professional who has helped a lot of unemployed persons by lending them money or providing them with job opportunities. We do not consider these to be compelling mitigating factors and they do not in any event provide an excuse for his failures in this case.
28. In arriving at the proper sanctions to be imposed in this case, the Committee has had regard to all the aforesaid matters, including the particulars in support of the Complaints, Mr Chan’s personal circumstances, the parties’ submissions, the previous decisions referred to us (although we bear in mind that each case must be decided on its own facts) and the respective conduct of Mr Chan and Ms Chan throughout the proceedings.
29. The Committee considered, in particular, the following facts and matters specific to this case:
 - (1) The Company is a listed company and the audit work in the present case affects the investing public. The public is entitled to expect that practising accountants discharge their duties and conduct their work to the highest standards of probity,

independence and competence. If public confidence is shaken, then the price to be paid by the profession as a whole will be very high.

(2) As to Mr Chan:

(a) The auditing irregularity in question is not a particularly serious mistake on its own. However, the manner in which Mr Chan has chosen to defend that mistake demonstrates an obvious lack of understanding of the requirements of the relevant accounting standards. Similarly, the manner in which he has confused the two separate and distinct processes under HKAS 600 and HKSA 220 show a clear lack of understanding of the role of an EQCR. These matters cast serious doubts as to his competence.

(b) As stated above, this is not the first time Mr Chan has been found to have fallen below professional standards in a listed audit. This case does not represent a single fall from grace, but rather a continuing lack of professional competence on the part of Mr Chan.

(c) Mr Chan is not currently holding a practising certificate. His practising certificate was cancelled on 4 April 2018 and would not be issued for 9 months (until 4 January 2019) by reason of his previous disciplinary case D-14-0974F.

(3) As to Ms Chan, her breaches were relatively less serious. She understood and recognised that she could no longer work as an EQCR once she had performed work on the UK Subsidiary. She also admitted to the Fourth Compliant at the earliest opportunity, thereby saving time and costs. She does not have any prior disciplinary record.

30. In the circumstances, we order the following sanctions to be imposed:

(1) An order that the Respondents be reprimanded under section 35(1)(b) of the PAO;

(2) An order that a practising certificate shall not be issued to Mr Chan for a period of 2 years from 5 January 2019 under section 35(1)(db) of the PAO.

(3) An order that Ms Chan pay a penalty of HK\$50,000 under section 35(1)(c) of the PAO.

Section C - COSTS

31. The Complainant submitted a Statement of Costs in the total sum of HK\$126,312.60. Save for the costs incurred by the FRC in the sum of HK\$20,095.60, such costs have been segregated as between Mr Chan and Ms Chan as follows:

		Mr Chan (HK\$)	Ms Chan (HK\$)
(1)	Actual costs incurred by the Institute's staff for the preparation of complaint documents and correspondence with the Respondents, Disciplinary Committee Convenor and Clerk to the Disciplinary Committee (from 14 June 2017 to present)	68,000.00	24,100.00
(2)	Costs incurred for the substantive hearing on 6 December 2018	5,400.00	
(3)	Clerk to the Disciplinary Committee	3,695.00	1,345.00
(4)	Others	3,473.50	203.50
	Total:	80,568.50	25,648.50

32. Mr Chan made a number of submissions on costs. In summary, Mr Chan submits:
- (1) He should not be required to bear the costs of the FRC because the referral to the FRC was initiated by the practice review team, who had found no non-compliance with relevant standards.
 - (2) As the Complainant itself did not consider the auditing irregularity in question to be a particularly serious mistake on its own, he should not be required to pay the investigation costs of both the FRC and the Committee.
 - (3) The Complainant was not justified in criticising the manner in which he defended or explained the auditing irregularity in this case, as he had been "trained" by the Institute to explain accounting treatments in this manner through the practice reviews he had been subjected to for years.
 - (4) The costs are excessive because there is no reason why (a) the Complainant and the Committee should incur more costs than the FRC and (b) two lawyers should have been involved.
 - (5) The Complainant should not have incurred costs to pursue the Complaints against him as he is not holding a practising certificate.
33. We do not accept Mr Chan's submissions. We are satisfied that both the FRC and the Complainant had acted properly in pursuing the Complaints and referring the matter to the Committee. There is no reason why costs should not follow the event. We are also satisfied that the costs and expenses set out in the Statement of Costs were reasonably and necessarily incurred. In particular, we note that only one counsel (Mr Kenneth Ng) was present during the substantive hearing of this matter.
34. In the circumstances, the Committee orders that:
- (1) Mr Chan and Ms Chan do pay the costs of the Complainant in the sum of HK\$80,568.50 and HK\$25,648.50 respectively under sections 35(1)(d)(i) and 35(1)(iii) of the PAO;
 - (2) The costs of the FRC in the sum of HK\$20,095.60 shall be borne by Mr Chan and Ms Chan equally under section 35(1)(d)(ii) of the PAO.

Dated 25 July 2019

Ms. Lam Ding Wan Catrina
Chairman
Disciplinary Panel A

Ms. Chan Lai Yee
Member
Disciplinary Panel A

Mr. Ip Chiu Yin Eddie
Member
Disciplinary Panel B

Ms. Chang See Mun Lily
Member
Disciplinary Panel A

Mr. Li Po Ting Peter
Member
Disciplinary Panel B