

IN THE MATTER OF

A Complaint made under Section 34(1)(a) and Section 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

1ST RESPONDENT
2ND RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants ("the Institute").

ORDER

Upon reading the complaint against each of the 1st Respondent, being a corporate practice, and the 2nd Respondent, being a certified public accountant (practising), as set out in a letter from the Registrar of the Institute ("the Complainant") dated 4 March 2009, the written submission of the Complainant dated 6 October 2009, the written submission of the Respondents dated 6 November 2009, and other relevant documents, the Disciplinary Committee is satisfied by the admission of the Respondents and the evidence adduced before it that the following complaint is proved:

That Section 34(1)(a)(vi) applies to each of the 1st Respondent and the 2nd Respondent in that they had failed or neglected to observe, maintain or otherwise apply a professional standard, namely the then applicable Statement of Standard Accounting Practice 17 ("Property, Plant and Equipment") in the audit of the

financial statements for the year ended 31 July 200[x] ("200[x] Financial Statements") of a listed company, in that the gain on disposal of the revalued assets was shown in the Income Statement as a gain of HK\$16,978,000, rather than a loss of HK\$6,432,000 in the 200[x] Financial Statements and the audit opinion did not contain a separate qualification on this.

IT IS ORDERED that:-

1. the Respondents be reprimanded under Section 35(1)(b) of the PAO;
2. the Respondents pay a penalty of HK\$40,000 under Section 35(1)(c) of the PAO; and
3. the Respondents do pay the costs and expenses of and incidental to the proceedings of the Institute in the sum of HK\$12,571 under Section 35(1)(iii) of the PAO.

Dated the 2nd day of February 2010

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REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants ("the Institute" or "HKICPA") as Complainant against each of the Respondents, who are respectively a corporate practice and a certified public accountant (practising). Section 34(1)(a)(vi) of the PAO applied to the Respondents.
2. The particulars of the complaint as set out in a letter dated 4 March 2009 ("the Complaint") from the Complainant to the Council of the Institute for consideration of the Complaint for referral to the Disciplinary Panels were as follows:-
 - (a) At all material times the 2nd Respondent was, and still is, a practising member of the Institute, and the Managing Director of the 1st Respondent, a corporate practice registered with the Institute.

- (b) The 2nd Respondent on behalf of the 1st Respondent had given a qualified opinion with a disclaimer on the 200[x] Financial Statements of a listed company in Hong Kong. The Complaint is related to the revaluation surplus realised on disposal of certain revalued floating craft and vessels ("revalued assets") in the sum of HK\$22,998,000, which had been incorrectly transferred to the Income Statement of the company.
- (c) The Consolidated Statement of Changes in Equity in the 200[x] Financial Statements disclosed that a revaluation surplus of HK\$22,998,000 was transferred to the Income Statement on disposal of the revalued assets during the year ended 31 July 200[x]. Note 7(b) to the 200[x] Financial Statements also disclosed that the company's group had recognized a gain on disposal of property, plant and equipment of HK\$16,978,000 (referring to the revalued assets) during the year. The calculation by the company of the gain on disposal of the revalued assets, as compared with what is considered by the Complainant to be the correct treatment, are set out as follows:

	Company's calculation		HKICPA's calculation	Reference to the 200[x] Financial Statements
	HK\$'000	HK\$'000	HK\$'000	
Disposal proceeds		28,936	28,936	Consolidated Cash Flow Statement
Less: Carrying amount				
<i>Cost or valuation:</i>				
Cost	(31,300)			Note 12
Revaluation	(9,297)			Notes 12, 4e
<i>Accumulated Depreciation:</i>				
Written back on disposal	17,430			Note 12
Revaluation	<u>(12,201)</u>			Notes 12, 4e
		<u>(35,368)</u>	<u>(35,368)</u>	
Gain / (Loss) on disposal		(6,432)	(6,432)	
Add: Revaluation surplus transferred to the Income Statement		22,998	0	Consolidated Statement of Changes in Equity
Add: Others		413	0	
Less: Rounding difference		<u>(1)</u>	<u>0</u>	
Gain/(Loss) on disposal of property, plant and equipment (included in "Other revenue" in Income Statement)		<u>16,978</u>	<u>(6,432)</u>	

- (d) The material difference between the two calculations above was the inclusion by the company of the revaluation surplus of HK\$22,998,000 in calculating the gain or loss on disposal. The transfer of the revaluation surplus to the Income Statement, that eventually led to a "gain on disposal" of HK\$16,978,000 as shown in the 200[x] Financial Statements, was inappropriate and in contravention of SSAP 17.
3. The Respondents admitted the Complaint against them. They did not dispute the facts as set out in the Complaint, and the Statement of Agreed Facts attached with their admission. They agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
 4. By a letter dated 16 September 2009 addressed to the Complainant and the Respondents, the Clerk to the Disciplinary Committee ("the Committee"), under the direction of the Committee, informed the parties that they should make written submissions to the Committee as to the sanctions and costs and that the Committee would not hold a hearing on sanctions and costs unless otherwise requested by the parties.
 5. The Committee therefore invited the parties to make written submissions in respect of the appropriate sanctions to be imposed on the Respondents. The Complainant made written submission to the Committee on 6 October 2009 and the Respondents made written submission to the Committee on 6 November 2009. In the Complainant's written submission it was submitted that the Complainant had no objection to any regard in respect of the Order to be made. The Complainant also submitted that the Respondents should pay the costs and expenses of and incidental to the disciplinary proceedings and in that connection a statement of costs was attached to the Complainant's written submission. The total costs incurred up to 28 September 2009 by the Complainant are HK\$1,040 whereas the costs of the Clerk to the Committee are HK\$4,560. The Committee has been informed that the costs incurred in relation to the Clerk after 28 September 2009 up to completion of proceedings are HK\$4,440. The disbursements, namely photocopying charges, are estimated to be HK\$2,531. The total costs and disbursements incurred in relation to the proceedings are therefore HK\$12,571.
 6. In their written submissions dated 6 November 2009, the Respondents invited the Committee to consider the following factors when considering the appropriate sanctions to be meted out by the Committee:
 - (a) the directors of the company have the primary responsibility for preparing the financial statements;
 - (b) the financial statements in the present case before the Committee was qualified (though not separately qualified in respect of the "gain on disposal of the revalued assets");
 - (c) no third party had suffered damage or loss;

- (d) the Respondents have improved and strengthened their auditing practice subsequent to the discovery of the non-compliance, the subject matter of this disciplinary proceeding;
 - (e) the Respondents admitted the Complaint at the earliest available opportunity saving the Complainant, the HKICPA and Committee costs and delay;
 - (f) the absence of aggravating factors such as improper or unprofessional conduct by the Respondents - the failure being the product of subordinated ex-employees of the 1st Respondent (i.e. the ex-Senior Audit Manager and ex-Audit Review Director); and
 - (g) community and professional services of the 2nd Respondent.
7. Upon the Respondents' own admission, and the clear evidence submitted by the Complainant in support of the charge, the Committee finds the charge proved.
8. In considering the appropriate orders to be made, the Committee takes the view that the early admission by the Respondents of the Complaint is a very strong mitigating factor. However, since the matter involved a public company listed on The Stock Exchange of Hong Kong Limited (as opposed to a private company), although it has not been proved that any third party had suffered damage or loss as a result of the non-compliance by the Respondents, a sanction comprising a reprimand and a penalty is appropriate. The Committee is also of the view that costs and expenses in relation to the proceedings should also be borne by the Respondents. The Committee also agrees that aggravating factors are absent in the matter but the material difference between the two calculations as more particularly described in paragraph 2(c) above is daunting. The Committee however does not find the other factors submitted by the Respondents relevant.
9. As regards the amount of penalty, the Committee is of the view that the starting point should be HK\$50,000. The time and costs saved as a result of the Respondents' early admission warrant a deduction of HK\$10,000.
10. The Committee therefore orders that:-
- 1) the Respondents be reprimanded under Section 35(1)(b) of the PAO;
 - 2) the Respondents pay a penalty of HK\$40,000 under Section 35(1)(c) of the PAO; and
 - 3) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Institute in the sum of HK\$12,571 under Section 35(1)(iii) of the PAO.

Dated the 2nd day of February 2010