

IN THE MATTER OF

Complaints made under Section 34(1)(a) 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
3rd Respondent**

**1st RESPONDENT
2nd RESPONDENT
3rd RESPONDENT**

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

Members:

REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of certified Public Accountants (“the Institute”) as the Complainant against the 1st Respondent, a certified public accountant (practising), the 2nd Respondent, a certified public accountant (practising) and the 3rd Respondent, a corporate practice pursuant to section 34(1)(a)(vi) and section 34(1AA) of the Professional Accountants Ordinance (cap 50) (“PAO”).
2. The particulars of the complaint are set out in a letter from the Complainant to the Council of the Institute dated 27th May 2014. The thrust of the complaint is as follows:

Complaint 1: Against 1st Respondent

that he failed or neglected to observe, maintain or otherwise apply a professional standard namely paragraph 100.4(c) as elaborated in paragraph 130.1 of the then applicable Code of ethics for Professional Accountants (“the Code”) for failure to act diligently in accordance with professional standards when carrying out the work, as an engagement director, on an Unaudited Pro Forma Financial Information and audit of the 2010 Financial Statements

Complaint 2: Against 2nd Respondent

he failed or neglected to observe, maintain or otherwise apply professional standards namely in (i) paragraphs 38 and 39 of HKSA 220; and (ii) paragraph 100.4(c) as elaborated in paragraph 130.1 of the then applicable Code for failure to act diligently and in accordance with professional standards when carrying out the work, as an engagement quality control reviewer, in the audit of the 2010 Financial Statements

Complaint 3: Against the 3rd Respondent

when carrying out the work on the Unaudited Pro Forma Financial Information and the audit of the 2010 Financial Statements , they have failed or neglected to observe, maintain or otherwise apply any one or all of the following professional standards:

- (i) Paragraph 4 of HKSIR 300;
- (ii) Paragraph 15 of HKSA 200;

- (iii) Paragraphs 2 and 9 of HKSA 230;
- (iv) Paragraphs 13, 14 and 22 of HKSA 200;
- (v) Paragraph 2 of HKSA 500;
- (vi) Paragraphs 3 and 63 of HKSA 545;
- (vii) Paragraphs 2, 8, 9 ,11, 12 and 15 of HKSA 620; and/or
- (viii) Paragraphs 11 and 13 of HKSA 700

BACKGROUND FACTS

3. Company A (“the Company”) was incorporated in the Cayman Islands and its shares are listed in the Growth Enterprise Market of the Stock Exchange of Hong Kong (“the Exchange”). The Company is now called Company B Holdings Limited with the stock code [xxxx].
4. The Company planned to acquire the entire equity interests of Company C and its subsidiaries (“the C Group”) and accordingly issued a Circular dated 22nd April 2010 in respect of the acquisition. The C Group’s assets principally constituted of land and properties which the Company intended to develop in order to operate the business of providing spaces for storage of deceased cremated ashes and other ancestral properties.
5. The acquisition was completed on 27th May 2010 at a total consideration of \$1,085 million comprising \$85 million in cash, \$150 million in promissory note and \$850 million in convertible bonds.
6. Included in Appendix IV of the Circular was the Unaudited Pro Forma Financial Information spelling out how the acquisition might affect the

financial information of the enlarged group made up of the Company and its subsidiaries (“the A Group”) and the CGroup.

7. On 22nd April 2010 the 3rd Respondent issued an unqualified accountant’s report on the Unaudited Pro Forma Financial Information which asserted that they had conducted their work in accordance with the Hong Kong Standard on Investment Circular Reporting Engagements 300 (HKSIR 300) and concluded that the basis of the preparation of the Unaudited Pro Forma Financial Information was consistent with the accounting policies of the Company.
8. Appendix I of the Circular indicated that the accounting policies stated that the financial information of the A Group were prepared in accordance with all applicable Hong Kong Financial Reporting Standards (“HKFRS”) and that the policy on accounting for business combinations was to comply with HKFRS 3 “*Business Combinations.*”¹
9. In the Unaudited Pro Forma Financial Information the land and properties of the C Group were classified as properties under development and were stated at carrying values instead of fair values at the date of acquisition.
10. The Financial Statements of the A Group for the year ended 30th June 2010 were stated to be having been prepared in accordance with HKFRS. However, in the 2010 Financial Statements the properties under development, which were classified as prepaid lease payments, and the convertible bonds were not

¹ HKFRS 3 (Revised) Paragraph 18 states that “*The acquirer shall measure the identifiable assets acquired and the liabilities assumed at their acquisition date fair value*”

Paragraph 37 states that “*The consideration transferred in a business combination shall be measured at fair value, which shall be calculated as the sum of the acquisition date fair values of the assets transferred by the acquirer, the liabilities incurred by the acquirer to former owners of the acquiree and the equity interest issued by the acquirer....*”

calculated at their fair values.

11. The 3rd Respondent was appointed auditors of the Company and on 10th September 2010 issued an unmodified report on the 2010 Financial Statements. The 1st and 2nd Respondents are practising directors of the 3rd Respondent, with the 1st Respondent as the engagement director and the 2nd Respondent the engagement quality control reviewer for the audit.
12. It transpires that for the Financial Statements for the year ended 2011 which were carried out by another firm of accountants, prior year adjustments had to be made to restate the prepaid lease payments and the convertible bonds to reflect their fair values.
13. On 9th July 2012, the Exchange made a referral to the Institute for investigation of the work performed by the 3rd Respondent in relation to their failure (i) to mention in the Accountants' Report that the properties under development reported in the Unaudited Pro Forma Financial Information were not reflected at fair value and (ii) failing to raise any concern in the auditors' report in the 2010 Financial Statements regarding the prepaid lease payments and the convertible bonds not being evaluated at their fair values in conformity with the relevant professional standards.
14. By a letter to the Institute dated 28th September 2012 the Respondents claimed that the Unaudited Pro-Forma Financial Information and the 2010 Financial Statements complied with the relevant professional standards.
15. By reason of the referral by the Exchange the Institute, pursuant to its statutory duties, referred the matter of the 2010 Financial Statements to the Financial Reporting Council ("FRC"). The FRC consequently referred the matter to be investigated by the Audit Investigation Board ("AIB").

16. The AIB completed its report on 16th October 2013 and concluded that the 2010 Financial Statements were non-compliant with the HKFRS 3 and Hong Kong Accounting Standard 32 in that the prepaid lease payments and the convertible bonds were not evaluated at their fair values. Further the AIB were of the view that the Respondents had not complied with the relevant professional standards in respect of the 2010 audit of the Company.
17. In response, the 3rd Respondent by a letter dated 6th December 2013 maintained that they had not ignored the requirements of the relevant professional standards and that they had exercised their judgment in relation to the fair values evaluation. They however conceded that their working papers for the audit of the 2010 Financial Statements “*was not completely in complying (sic) with the standards. But as our audit programme was amended in October 2010, we believe that the conditions will not be happened again (sic) and our working paper will comply with the requirements of the Hong Kong Auditing Standards.*”

SUMMARY OF THE PRINCIPAL ISSUES

Unaudited Pro Formal Financial information

18. The Company failed to state the properties under development at their fair values in accordance with HKFRS 3 in respect of *Business Combinations*.² It is not in dispute that the Accountants' Report issued by the 3rd Respondent did not raise any concern in this regard.
19. The differential between the carrying value of the properties under development of \$147.9 million and the fair value of \$25.4 million was approximately \$122 million. This significant discrepancy represented 12% of the total assets less current liabilities as reported in the unaudited Pro-Forma Financial Information.
20. This shows that the 3rd Respondent failed to comply with HKSIR 300 *Accountants' Reports on Pro Forma Financial information in Investment Circulars*³ with particular reference to Accounting Guideline 7 *Preparation of Pro Forma Financial information for inclusion in Investment Circulars*.⁴

² See fn 1

³ Paragraph 3 states "In an engagement to report on pro forma financial information in investment circulars, reporting accountants should comply with this HKSIR and to the extent applicable, relevant HKSA's and Hong Kong Standards on Assurance Engagements."

Paragraph 4 states "Reporting accountants plan and perform their work so as to obtain sufficient evidence to provide reasonable assurance

a. the pro forma financial information has been properly compiled by the directors of the issuer on the basis stated;

b. such basis is consistent with the accounting policies of the issuer."

⁴ Paragraph 8 of Guideline 7 stipulates "Listing Rule 4.29(1)/GEM Rule 7.31(1) requires that proforma financial information must provide investors with information about the impact of the transaction the subject of the investment circular by illustrating how that transaction might have affected the financial information presented

2010 Financial Statements

21. Two matters arise in respect of these statements:
- (a) the failure to measure the prepaid lease payments according to fair values in conformity with paragraph 18 of HKFRS 3;⁵ and
 - (b) failing to measure the equity value of the convertible bonds at fair value in conformity with paragraph 37 of HKFRS 3⁶ and paragraphs 31 and 32 of HKAS 32⁷
22. It transpires that the reduced value of \$118.4 million in respect of prepaid lease payments and \$83.8 million in convertible bonds in the light of the fair value adjustments was equivalent to 17% and 12% respectively of the net assets of the A Group, which would have a material impact on the picture presented by the 2010 Financial Statements.

in the investment circular, had the transaction been undertaken at the commencement of the period being reported on or, in the case of a pro forma balance sheet or net asset statement, at the date reported on. The pro forma financial information presented must not be misleading, must assist investors in analyzing future prospects of the issuer.”

⁵ See fn1

⁶ See fn 1

⁷ Paragraph 31 stipulates “... Therefore, when the initial carrying amount of a compound financial instrument is allocated to its equity and liability components, the equity component is assigned the residual amount after deducting the from the fair value of the instrument as a whole the amount separately determined for the liability component...The sum of the carrying amounts assigned to the liability and equity components on initial recognition is always equal to the fair value that would be ascribed to the instrument as a whole... ”

Paragraph 32 stipulates “Under the approach described in paragraph 31, the issuer of a bond convertible into ordinary shares first determines the carrying amount of the liability component by measuring the fair value of a similar liability (including any embedded non-equity derivative features) that does not have an associated equity component. The carrying amount of the equity instrument represented by the option to convert the instrument into ordinary shares is then determined by deducting the fair value of the financial liability from the fair value of the compound financial instrument as a whole.”

23. The 3rd Respondent failed to express any modified opinion in respect of the non-compliance with HKFRS 3 and HKAS 32⁸ on these 2010 Financial Statements of the Company as well as paragraphs 11 and 12 of the HKSA 700 *The Independent Auditor’s Report on a Complete Set of General Purpose Financial Statements*⁹.
24. In carrying out the audit of the 2010 Financial Statements, the 3rd Respondent was found to have failed to comply with the following HKSAs:
- (a) Paragraph 15 of HKSA 200 (Revised) “*Objective and general Principles Governing an Audit of Financial Statements*”;
 - (b) Paragraphs 2 and 9 of HKSA 230 “*Audit Documentation*”;
 - (c) Paragraphs 13, 14 and 22 of HKSA 300 “*Planning an Audit of Financial Information*”;
 - (d) Paragraph 2 of HKSA 500 “*Audit Evidence*”;
 - (e) Paragraphs 3 and 63 of HKSA 545 “*Auditing Fair Value Measurements and Disclosures*”;
 - (f) Paragraphs 2, 8, 9, 11, 12 and 15 of HKSA 620 “*Using the Work of an Expert*”.
25. The basis for the findings of the aforementioned non-compliance has been fully set out in the AIB Report dated 16th October 2013, which findings are accepted by this Committee. Reference should be made to the Report for the details, which are not repeated here in the interests of striking a balance between the length of our Decision and its comprehension.

⁸ See fn 1

⁹ See fn 7

26. The 2nd Respondent failed to carry out an adequate review of the audit of the 2010 Financial Statements in conformity with HKSA 220 “*Quality Control for Audits of Historical Financial Information*”¹⁰.
27. The 1st and 2nd Respondents also failed to act in accordance with the relevant professional standards at the material time as embodied in The Code of Ethics for Professional Accountants.¹¹ In the circumstances the 1st, 2nd and 3rd Respondents failed or neglected to observe, maintain or otherwise apply professional standards pursuant to section 34(1)(a)(vi) of the PAO.
28. By letters dated 21st July 2014 signed by each of the three Respondents, they indicated they would admit the complaints laid against each of them

¹⁰ Paragraph 38 states that “An engagement quality control review should include an objective evaluation of

(a) The significant judgments made by the engagement team; and

(b) The conclusions reached in formulating the auditor’s report.”

Paragraph 39 states that “An engagement quality control review ordinarily involves discussion with the engagement partner, a review of the financial information and the auditor’s report, and in particular, consideration of whether the auditor’s report is appropriate. It also involves a review of selected audit documentation relating to the significant judgments the engagement team made and the conclusions they reached...”

¹¹ Paragraph 100.4 states that “A professional accountant is required to comply with the following fundamental principles:

(c) Professional Competence and Due Care

A professional accountant has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques. A professional accountant should act diligently and in accordance with applicable technical and professional standards when providing professional services.”

Paragraph 130.1 stipulates that “The principle of professional competence and due care imposes the following obligations on professional accountants:

(a) To maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service;

and

(b) To act diligently in accordance with applicable technical and professional standards when providing professional services.”

respectively. There was no dispute as to the facts as set out in the respective complaints. The parties agreed that the steps set out in paragraphs 17-30 of the Disciplinary Committee Proceedings Rules could be dispensed with.

29. The Committee then directed that the parties to file submissions in respect of sanctions and mitigation without the need for a hearing. These were duly done and received by the members of the Committee on 22nd September 2014.
30. The 1st and 3rd Respondent candidly acknowledged that this was not the first time they had come before the Disciplinary Committee of the Institute, although it was in relation to a non-related matter without any elaboration. By a letter dated 23rd September 2014, the Complainant confirmed the previous disciplinary record explaining that it related to a failure by the 1st and 3rd Respondents with respect to the understatement and inadequate disclosures of depreciation in respect of the revalued plant and machinery of a listed company.

DECISION

31. The Committee has carefully considered everything that has been advanced to us in submissions by both the Complainant and the Respondents. We take note that the Respondents admitted the complaints laid against them at an early stage thereby obviating the need for a full hearing. We acknowledge that this reflects a recognition of their respective failures and an acknowledgement of their responsibility for the same.
32. We would also observe that the complaints concerned a public listed company and the nature of their failures involved a possible misleading of the investing public in the company. We are of the view that these are serious breaches by all

three Respondents. The public are entitled to expect that practising accountants and corporate entities discharge their duties and carry out their work to the highest standards of probity, independence and competence. If public confidence is shaken then the price to be paid by the entire accountancy profession is very high.

33. We therefore believe that it is important that public confidence in the accountancy profession is maintained and that any sanctions imposed by the Committee should be appropriate to the particular facts of the case but also act as deterrence to others that non-compliance by accountancy professionals to the high standards expected of them would be viewed seriously and would exact suitably severe sanctions.
34. Having considered all the matters we make the following orders:
 - (a) The 1st, 2nd and 3rd Respondents be reprimanded under section 35(1)(b) of the PAO;
 - (b) The 1st and 3rd Respondents each pay a penalty of \$50,000 under section 35(1)(c) of the PAO;
 - (c) The 2nd Respondent pay a penalty of \$35,000 under section 35(1)(c) of the PAO;
 - (d) The Respondents are jointly and severally liable to pay the costs of and expenses incidental to the proceedings of the Complainant and the Financial Reporting Council in the total sum of \$23,673.20 under Section 35(1)(iii) and Section 35(1)(d)(ii) of the PAO.

Dated the 17th day of November 2014