

IN THE MATTER OF

A Complaint made under Section 34(1)(a) and Section 34(1A) of the Professional Accountants Ordinance (Cap.50) ("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

1<sup>st</sup> RESPONDENT  
2<sup>nd</sup> RESPONDENT  
3<sup>rd</sup> RESPONDENT

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

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**ORDER**

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Upon reading the complaints against 1<sup>st</sup> Respondent, 2<sup>nd</sup> Respondent and 3<sup>rd</sup> Respondent, being certified public accountants, as set out in the respective letter from the Registrar of the Hong Kong Institute of Certified Public Accountants ("Complainant") all dated 5 March 2009, the respective written submission on behalf of each of the Respondents all dated 21 October 2009, the written submission of the Complainant dated 7 October 2009, the Disciplinary Committee is satisfied by the admission of the Respondents and the evidence adduced before it that the following complaints are proved:-

1. That Section 34(1)(a)(vi) of the PAO applied to the 1st Respondent in that he failed or neglected to observe, maintain or otherwise apply the Statement 1.200 "Professional Ethics – Explanatory Foreword" as he was found by the Market Misconduct Tribunal of Hong Kong to have engaged in insider dealing in respect of the listed shares of Company A, contrary to section 270(1)(a)(i) of the Securities and Futures Ordinance, Cap. 571.
2. That section 34(1)(a)(vi) of the PAO applied to the 2nd Respondent in that he failed or neglected to observe, maintain or otherwise apply the Statement 1.200 "Professional Ethics – Explanatory Foreword" as he was found by the

Market Misconduct Tribunal of Hong Kong to have engaged in insider dealing in respect of the listed shares of Company A, contrary to section 270(1)(a)(i) of the Securities and Futures Ordinance, Cap. 571.

3. That section 34(1)(a)(vi) of the PAO applied to the 3rd Respondent in that she failed or neglected to observe, maintain or otherwise apply the Statement 1.200 "Professional Ethics – Explanatory Foreword" as she was found by the Market Misconduct Tribunal of Hong Kong to be culpable of knowingly or recklessly disclosing information that was false or misleading as to a material fact, which information was likely to induce another person or persons to buy the shares of Company A in Hong Kong to maintain, increase or stabilise the price of those shares in Hong Kong, contrary to section 277 (1)(a) and (c) of the Securities and Futures Ordinance, Cap.571. Further, section 34(1)(a)(viii) of the PAO applied to the 3<sup>rd</sup> Respondent in that she was guilty of professional misconduct.

IT IS ORDERED that:-

- (1) each of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be reprimanded under section 35(1)(b) of the PAO;
- (2) the name of the 3rd Respondent be removed from the register of certified public accountants for 18 months from 1 March 2010 under section 35(1)(a) of the PAO;
- (3) the 1st, 2nd and 3rd Respondents each pay a penalty of HK\$100,000.00 under section 35(1)(c) of the PAO;
- (4) the 1st, 2nd and 3rd Respondents do pay the costs and expenses of and incidental to the proceedings of the Complainant under section 35(1)(iii) of the PAO as follows –

1 <sup>st</sup> Respondent	HK\$4,267.00
2 <sup>nd</sup> Respondent	HK\$4,627.00
3 <sup>rd</sup> Respondent	HK\$3,907.00

Dated the 18th day of January 2010

IN THE MATTER OF

A Complaint made under Section 34(1)(a) and Section 34(1A) of the Professional Accountants Ordinance (Cap.50) (“**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

1<sup>st</sup> RESPONDENT

2<sup>nd</sup> RESPONDENT

3<sup>rd</sup> RESPONDENT

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**REASONS FOR DECISION**

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1. Complaints were made by the Registrar of the Hong Kong Institute of Certified Public Accountants (“**Institute**”) as Complainant against each of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, all of whom are certified public accountants. Section 34(1)(a)(vi) of the PAO applied to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Section 34(1)(a)(vi) and 34(1)(a)(viii) of the PAO applied to the 3<sup>rd</sup> Respondent.
2. The particulars of the Complaints under the three letters all dated 5 March 2009 (“**Complaint**”) from the Registrar of the Institute to the Council of the Institute for consideration of the Complaint for referral to the Disciplinary Panels, and as referred to in the respective Statement of Agreed Facts by the Complainant and the 3 Respondents, were as follows:-

Against the 1<sup>st</sup> Respondent

- (1) On 21 July 2008, the 1<sup>st</sup> Respondent was found by the Market Misconduct Tribunal of Hong Kong (“**Tribunal**”) to have engaged in

insider dealing in respect of the listed shares of Company A, contrary to section 270(1)(a)(i) of the Securities and Futures Ordinance, Cap.571 (“**Ordinance**”).

- (2) At all material times, the 1<sup>st</sup> Respondent was a certified public accountant and was employed as a Business Development Manager of Company D, a wholly-owned subsidiary of Company A.
- (3) On [Date], the 1<sup>st</sup> Respondent was granted share options in respect of 4 million shares of Company A.
- (4) During the period of about three and a half weeks before the announcement of Company A’s interim results on [Date], the 1<sup>st</sup> Respondent exercised all his share options and then sold all his shares of Company A. By doing so, he made a profit of HK\$83,847.
- (5) The interim results announcement showed a drop of 71.8% in Company A’s net profit for the six months ended [Date]. The share price of Company A dropped by 33% the day following the interim results announcement.
- (6) The Tribunal found that the 1<sup>st</sup> Respondent was a person connected with Company A and had known the interim results of Company A before its announcement which was relevant and price sensitive information not generally known by the investing public before its publication and which, if announced, would lead to a reduction in the price of Company A shares.
- (7) On [Date], The Tribunal made the following orders under the Ordinance in respect of the 1<sup>st</sup> Respondent that:
  - (i) he shall not, without the leave of the Court of First instance, be a director, liquidator, or receiver or manager of the property or business of a listed corporation for the period of 12 months;
  - (ii) he shall pay to the Government HK\$83,847;
  - (iii) he shall pay to the Government compound interest on the aforesaid sum of HK\$83,847 from [Date], at the rate applicable to judgment debts under section 49 of the High Court Ordinance, Cap.4;
  - (iv) he shall pay to the Government HK\$224,316.25;
  - (v) he shall pay to the Securities and Futures Commission HK\$13,559.55;

- (vi) the Institute be recommended to take disciplinary action against him; and
- (vii) the whole of the report of the Tribunal be served upon the Institute.

On the basis of the above, the Complainant has reason to believe that section 34(1)(a)(vi) of the PAO applied to the 1st Respondent in that he failed or neglected to observe, maintain or otherwise apply the Fundamental Principles set out in Statement 1.200 (*as referred to in Paragraph 3 below*).

Against the 2<sup>nd</sup> Respondent

- (1) On [Date], the 2<sup>nd</sup> Respondent was found by the Tribunal to have engaged in insider dealing in respect of the listed shares of Company A, contrary to section 270(1)(a)(i) of the Ordinance.
- (2) At all material times, the 2<sup>nd</sup> Respondent was a certified public accountant and was employed as an Assistant Business Development Manager of Company D, a wholly-owned subsidiary of Company A.
- (3) On [Date], the 2<sup>nd</sup> Respondent was granted share options in respect of 4 million shares of Company A.
- (4) During the period of about three and a half weeks before the announcement of Company A's interim results on [Date], the 2<sup>nd</sup> Respondent exercised all his share options and then sold all his shares of Company A. By doing so, he made a profit of HK\$287,301.
- (5) The interim results announcement showed a drop of 71.8% in Company A's net profit for the six months ended [Date]. The share price of Company A dropped by 33% the day following the interim results announcement.
- (6) The Tribunal found that the 2<sup>nd</sup> Respondent was a person connected with Company A and had known the interim results of Company A before its announcement which was relevant and price sensitive information not generally known by the investing public before its publication and which, if announced, would lead to a reduction in the price of Company A shares.
- (7) On [Date], the Tribunal made the following orders under the Ordinance in respect of the 2<sup>nd</sup> Respondent that :
  - (i) he shall not, without the leave of the Court of First Instance, be a director, liquidator, or receiver or manager of the property or business of a listed corporation for the period of 12 months;

- (ii) he shall pay to the Government HK\$287,301;
- (iii) he shall pay to the Government compound interest on the aforesaid sum of HK\$287,301 from [Date], at the rate applicable to judgment debts under section 49 of the High Court Ordinance, Cap.4;
- (iv) he shall pay to the Government HK\$224,316.25;
- (v) he shall pay to the Securities and Futures Commission HK\$13,559.55;
- (vi) the Institute be recommended to take disciplinary action against him; and
- (vii) the whole of the report of the Tribunal be served upon the Institute.

On the basis of the above, the Complainant has reason to believe that section 34(1)(a)(vi) of the PAO applied to the 2<sup>nd</sup> Respondent in that he failed or neglected to observe, maintain or otherwise apply the Fundamental Principles set out in Statement 1.200 (*as referred to in Paragraph 3 below*).

Against the 3<sup>rd</sup> Respondent

- (1) On [Date], the 3<sup>rd</sup> Respondent was found by the Tribunal to be culpable of knowingly or recklessly disclosing information that was false or misleading as to a material fact, which information was likely to induce another person or persons to buy the shares of Company A in Hong Kong or to maintain, increase or stabilise the price of those shares in Hong Kong, contrary to section 277(1)(a) and (c) of the Ordinance.
- (2) At the material times, the 3<sup>rd</sup> Respondent was a certified public accountant and was the Director and Company Secretary of Company A.
- (3) On [Date], [Date], [Date] and [Date], announcements were published by Company A regarding negotiations said to be undertaken between the controlling shareholder, Company B and various parties in relation to the proposed placement of shares of Company A.
- (4) The announcements were issued in the name of the 3<sup>rd</sup> Respondent in her capacity as the Company Secretary of Company A and by order of the board of directors of Company A. The 3<sup>rd</sup> Respondent provided Company A's solicitors with the relevant information for making those announcements.
- (5) The Tribunal found that the information disclosed in the aforesaid announcements was false or misleading in a material fact and that such

information was likely to operate to maintain, increase or stabilise the price of Company A shares.

- (6) Company B which was then wholly owned and controlled by the Chairman of Company A, sold 179 million shares of Company A between [Date] and [Date]. The disposals reduced Company B's shareholding in Company A from 72.82% to 29.37%.
- (7) The Tribunal concluded it was clear that the sale of Company A shares by Company B ran in parallel with the false or misleading announcements made, and that the 3<sup>rd</sup> Respondent played a significant role in the sale of the shares by liaising between the Chairman of Company A and an account executive, through whom those shares were sold, regarding the issues of price and sales volume of those shares.
- (8) On the basis of the above, the Tribunal found that the 3<sup>rd</sup> Respondent was culpable of knowingly or recklessly disclosing information false or misleading as to a material fact, which information was likely to induce another person or persons to buy Company A shares in Hong Kong or to maintain, increase or stabilise the price of those shares in Hong Kong, contrary to section 277(1)(a) and (c) of the Ordinance.
- (9) On [Date], the Tribunal made the following orders under the Ordinance in respect of the 3<sup>rd</sup> Respondent that :
  - (i) she shall not, without the leave of the Court of First Instance, be a director, liquidator, or receiver or manager of the property or business of a listed corporation for the period of four years;
  - (ii) she pay to the Government the sum of HK\$568,841.46;
  - (iii) she pay to the Securities and Futures Commission the sum of HK\$32,542.92;
  - (iv) the Institute be recommended to take disciplinary action against her; and
  - (v) the whole of the Tribunal's report be served upon the Institute.

On the basis of the above, the Complainant has reason to believe that section 34(1)(a)(vi) of the PAO applied to the 3<sup>rd</sup> Respondent in that she failed or neglected to observe, maintain or otherwise apply the Fundamental Principles set out in Statement 1.200 (*as referred to in Paragraph 3 below*), and that section 34(1)(a)(viii) applied to the 3<sup>rd</sup> Respondent in that she was guilty of professional misconduct.

3. Statement 1.200 “Professional Ethics – Explanatory Foreword” (revised April 1999 and effective from May 1999) (“**Statement 1.200**”) states:-

*“FUNDAMENTAL PRINCIPLES*

*The following are the Fundamental Principles on which the ethical guidance of the [Hong Kong Institute of Certified Public Accountants] is based :-*

*.....*

*4. A member should follow the ethical guidance of the [Institute] and in circumstances not provided for by that guidance should conduct himself in a manner consistent with the good reputation of the profession and the [Institute].”*

4. All the Respondents admitted the Complaint against them. They did not dispute the facts as set out in the Complaint, and admitted the facts as set out in the respective Statement of Agreed Facts. They agreed that the steps under Rules 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
5. By the letter dated 25 September 2009 addressed to the Complainant and the Respondents, the Clerk to the Disciplinary Committee (“**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.
6. By the letter dated 7 October 2009, the Complainant has made written submissions to the Committee on the sanctions and costs with 3 Statements of Costs. By 3 letters all dated 14 October 2009, the solicitors acting for the 3 Respondents have made written submissions on behalf of each of the 3 Respondents as to the sanctions and costs to be imposed by the Committee.
7. In considering the proper orders to be made, the Committee has had regard to all the aforesaid matters, including the Statements of Agreed Facts in respect of each of the 3 Respondents and that the Complaint against the 3 Respondents related to a listed company.
8. In the course of deciding the disciplinary orders to impose, the Committee has considered in particular the respective written submissions of the 3 Respondents on sanction and costs, as well as the early admission of the Complaint by the Respondents thus avoiding the necessity of a formal hearing.



9. After careful deliberation, the Committee orders that:-

- (1) each of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be reprimanded under section 35(1)(b) of the PAO;
- (2) the name of the 3<sup>rd</sup> Respondent be removed from the register of certified public accountants for 18 months from 1 March 2010 under section 35(1)(a) of the PAO;
- (3) the 1st, 2nd and 3rd Respondents each pay a penalty of HK\$100,000.00 under section 35(1)(c) of the PAO;
- (4) the 1st, 2nd and 3rd Respondents do pay the costs and expenses of and incidental to the proceedings of the Complainant under section 35(1)(iii) of the PAO as follows –

1 <sup>st</sup> Respondent	HK\$4,267.00
2 <sup>nd</sup> Respondent	HK\$4,627.00
3 <sup>rd</sup> Respondent	HK\$3,907.00

Dated the 18th day of January 2010