

IN THE MATTER OF

A Complaint made under 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

Yeung Tat Kwong  
Membership No. A19557

RESPONDENT

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

Members: Mr. Wong Tim Wai (Chairman)  
Ms. So Man Wah, Miranda  
Ms. Yap Hiu Yee, Betty  
Mr. Lee Kwo Hang, Felix  
Dr. Kam Pok Man

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**ORDER & REASONS FOR DECISION**

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1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (the "Institute") against Yeung Tat Kwong, certified public accountant (the "Respondent").
2. The particulars of the complaint as set out in a letter dated 6 September 2017 from the Registrar to the Council of the Institute are as follows:-

**Background**

- (1) On 27 April 2016, The Law Society of Hong Kong ("LawSo") lodged a complaint against the Respondent in respect of his Accountant's Reports for each of the years ended 31 March 2013, 2014 and 2015 (the "Accountant's Reports") on a solicitors' firm, Alan Ho & Co. Solicitors, in which the LawSo had intervened (the "Firm"). The Accountant's Reports were dated 27 September 2013, 30 September 2014 and 30 September 2015 respectively.

- (2) LawSo noted from its enquiry that there were breaches of the Solicitors' Accounts Rules ("SAR") by the Firm as follows:
- (a) The Firm failed to produce a complete set of books and accounts, bank statements, bank reconciliation and client reconciliation statements of all its client accounts and other supporting documents for inspection (breach of Rules 10(1), 10(2), 10(3), 10A and 11 of the SAR).
  - (b) There were overdraft balances of client's money as revealed from the bank statements of the Firm (breach of Rules 7 and 9A of the SAR).
  - (c) There were 88 debit balances in the total sum of HK\$27,062,303.55 shown in the listing of client's ledgers (known as Client Audit List) as at 21 March 2016 of the Firm's offices in Tsim Sha Tsui and Yau Mai Tei (breach of Rule 7 of the SAR).
- (3) The Council of the LawSo resolved to reject the Accountant's Reports, on the basis that the reports were not prepared in accordance with the Accountant's Report Rules ("ARR").
- (4) At the material time, the Respondent was practising full time in his own name. The Respondent issued an unqualified opinion in each of the Accountant's Reports as follows:-
- "(1) I am satisfied that during the accounting period the firm had complied with the provisions of the Solicitors' Accounts Rules;*
  - (2) I am not aware of any matter which appears to affect adversely any client account or any trust money held by the firm to a material extent."*
- (5) According to LawSo, the Firm and/or the Respondent responded to its enquiry and admitted the following:-
- (a) They admitted that the Firm had not prepared any client accounts' reconciliation statements from 1 January 2013 to 29 February 2016.
  - (b) The Firm admitted that it recorded client money movements in Microsoft Excel prior to its implementation of the Libra application (either in May 2014 or 2015). However, it could not produce any of the records from Microsoft Excel. The Firm also admitted that the records in Libra were incomplete.
  - (c) The Respondent and the Firm admitted that no client ledgers or client's cash book had been prepared from 1 January 2013 to 17 March 2016.
  - (d) The Respondent admitted that no office ledgers or office cash book were prepared by the Firm's Sheung Shui, Tsim Sha Tsui and Yau Ma Tei

offices from 1 January 2013 to 29 February 2016.

- (6) LawSo provided copies of the Client Audit List for the Firm's branches for the three years in question. The Client Audit List shows that for the years ended 31 March 2013, 2014 and 2015, there were 79, 16 and 3 negative client balances respectively.
- (7) The above shows that the Firm was apparently in breach of Rules 7 and 9A<sup>1</sup> of the SAR in each of the three years. If the Respondent had performed a proper scrutiny of the client ledger balances during his work on the Accountant's Reports, he would have been able to notice the breaches and report them in the Accountant's Reports.
- (8) Rule 4(1) of the ARR sets out the duties of the Respondent as the reporting accountant when he examined the books and records of the Firm.
- (9) Rule 4(2) of the ARR requires that, if in the performance of the duties required of him in Rule 4(1) it appears to the reporting accountant that there is evidence that the SAR have not been complied with or he becomes aware of any matter which appears to affect adversely any client account or any trust money held by the firm to a material extent, he shall include in the accountant's report signed by him such details of the contravention or matter.
- (10) The Institute wrote to the Respondent in May 2016 requesting him to provide copies of the working papers that supported the Accountant's Reports. The Respondent replied in June 2016 and represented that copies of the working papers for the captioned years were not available as a result of hardcopies of the working papers being allegedly "misplaced in home office and/or storage", and alleged failures of his laptop computer's hard disks on which the scanned copy of the working papers was stored.

### **The Complaints**

- (11) **Complaint 1:** Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed to comply with paragraphs 46 and 47 of Hong Kong Standard on Quality Control 1 (issued June 2009, revised May 2013, February 2015) ("**HKSQC 1**"), as a result of his failure to establish proper procedures to maintain the safe custody, accessibility and retrievability of engagement documentation relating to the Accountant's Reports, and to retain such documentation for a period sufficient to meet the needs of his practice.
- (12) **Complaint 2:** Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed to perform the engagements regarding the Accountant's Reports with

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<sup>1</sup> Rule 7 states that withdrawal of client monies can only be made under restricted circumstances. Rule 9A imposes a duty on the principals of a firm to remedy any breach of the Solicitors' Accounts Rules promptly upon discovery

adequate professional competence and due care under sections 100.5 and 130 of the Code of Ethics for Professional Accountants, as a result of him failing to report in the Accountant's Reports, the Firm's breaches of the SAR as follows:-

- (a) The Firm had not prepared any client accounts' reconciliation statements from 1 January 2013 to 31 March 2015, in breach of Rule 10A of the SAR;
- (b) The Firm did not prepare any client ledgers or client's cash book from 1 January 2013 to 31 March 2015, in breach of Rules 10(1) and 10(2) of the SAR; and
- (c) The Firm's branch offices in Sheung Shui, Tsim Sha Tsui and Yau Ma Tei did not prepare office ledgers or an office cash book from 1 January 2013 to 31 March 2015, in breach of Rule 10(3) of the SAR.

#### **Facts and Circumstances in support of Complaint 1**

- (13) Responding to the Institute's request for a copy of the working papers pertaining to the Accountant's Reports, the Respondent stated in his letter dated 2 June 2016 the following:-
  - (a) *"The working papers and documents was in the form of / scanned to softcopy and kept in my laptop. With failures of the hard disks, the working papers cannot be retrieved;"*
  - (b) *"Hard copy of the working papers was mislaid in home office and/or storage places such that I cannot locate them now."*
- (14) Regarding the unavailability of the working papers for the Accountant's Reports, the Respondent provided a copy of his policy for complying with engagement retention requirements under Hong Kong Standard on Quality Control 1 – Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements. Appendixes I and II states as follows:-

*"Appendix I: Policy for complying with engagement retention requirements under HKSQCI*

#### ***WORKING PAPER RETENTION***

*I shall ensure that engagement documentation is retained for a minimum of five years after the report release date.*

*If no report was issued, the five-year period starts from the date that fieldwork was substantially completed.*

*The five-year period shall be extended in any instance where:*

- a) *A longer period is stipulated by law or regulations; or*
- b) *There is reason to believe that access to the files may be required by other authorized personnel (inspectors, lawyers, etc.) to gather information or to support the work performed.*

*During the retention period, I will ensure that engagement documentation:*

- a) *Is kept in a secure place where file access and retrieval is limited to authorized personnel; and*
- b) *Includes a complete record of additions to engagement documentation after the engagement files have been completed.*
- c) *Where documentation is stored electronically, the underlying technology used to retrieve data may be upgraded or changed over time. Consequently, I shall retain a copy of the software applications (and software versions) and any other technology required to restrict access to and retrieval of engagement documentation created at any time during the retention period.*

***Appendix II: My procedures of retaining engagement documentation***

***File retention period for working paper***

- *Assurance services for Hong Kong incorporated entity: 6 years after the report release date*
- *Other assurance and related services: 5 years from fieldwork*

***Hardcopy of working paper files***

- *All working paper from box file should be transfer to paper file after "60-days assembly period".*
- *Paper files should be moved to mini-storage place in public warehouse for permanent storage:*
  - *For one-off assignment, immediate after "60-days assembly period".*
  - *For ongoing assignment, after the completion of assurance work for coming year.*
- *The mini-storage place is locked up and only the sole proprietor has the key to open the door.*
- *Paper files after the retention period should be retrieved from the min-storage place and destroyed by paper scrapped machine.*

***Documentation stored electronically***

- *All soft copies are saved in the notebook of the sole proprietor and no person is permit to access the notebook.*
- *Periodical backup should be done to ensure data integrity."*

- (15) The Respondent was requested to provide a list of assurance engagements he performed from 2012 to 2015 showing whether engagement documentation

was available for each of those engagements. The list shows that only files relating to the engagement of the Firm could not be located.

- (16) In his letter dated 9 June 2017, the Respondent provided explanations as follows:-
- (a) Responding to the questions regarding whether there were any back-up copies of the files, and why only files in respect of the engagement of the Firm went missing, the Respondent represented, "*Hardcopy of working papers are stored in my home and storage places. Due to limited resources and workload, the management of the storage is not well organized and I cannot locate the working papers of [the Firm]. I admit that I have deficiency in the retention of the working papers in the case of [the Firm].*"
  - (b) In response to questions regarding whether he had attempted to repair the laptop with the alleged hard disk failure, what the diagnosis made by the repairer was, and to provide evidence of the repair work (such as invoice), he avoided answering the questions and represented that "*no documents can be produced right now*".
- (17) Regarding the alleged facts or explanation put forward by the Respondent, there were multiple non-compliances with his own documentation retention policy, such as:-
- (a) failure to retain the engagement documentation for the minimum period of 5 years;
  - (b) he did not even seem to know for certain whether the documentation was being kept at the "home office" or "storage places". In any event neither were a "secure place" where the documentation would not be lost;
  - (c) no periodic back-ups of the scanned electronic copies of the engagement documentation were made; thus, the electronic copies were permanently lost upon the alleged failure of the computer hard disk storing them.
- (18) The Respondent also failed to endeavour to retrieve or recover soft copies of the documentation allegedly lost due to the hard disk failure, as he could not produce any evidence showing that he had attempted to repair the disk or what the diagnosis received was after any repair.
- (19) While the Respondent admitted that there were deficiencies in his retention of working papers for this particular engagement, it is peculiar that the loss of working papers is only confined to the subject engagements of this case.

- (20) In light of the above, the Respondent failed to comply with paragraphs 46 (as elaborated in A57, A58, A59) of HKSQC1 in that he did not properly establish procedures to maintain the safe custody, accessibility and retrievability of the engagement documentation in this case.
- (21) In addition, the Respondent failed to establish procedures in this case for the retention of engagement documentation for a period which was prescribed under his own policy as sufficient to meet the needs of the firm. Accordingly, he failed to comply with paragraphs 47 (as elaborated in A63) of HKSQC1.

### **Facts and Circumstances in support of Complaint 2**

- (22) The LawSo's letter dated 31 October 2016 to the Institute stated that the Respondent had admitted to the LawSo that:-
- (a) the Firm had not prepared any client accounts' reconciliation statements from 1 January 2013 to 29 February 2016 (breach of Rule 10A of the SAR);
  - (b) no client ledgers or clients' cash book had been prepared from 1 January 2013 to 17 March 2016 (breach of Rules 10(1) and 10(2) of the SAR); and
  - (c) no office ledgers or office cash book were prepared by the Firm's Sheung Shui, Tsim Sha Tsui and Yau Ma Tei offices from 1 January 2013 to 29 February 2016 (breach of Rule 10(3) of the SAR).
- (23) Paragraph 19b of the Practice Note 840 – The Audit of Solicitors' Accounts under the Solicitors' Accounts Rules and the Accountant's Report Rules states as follows:-
- "Rule 4(2) [of ARR] requires that if in the performance of the duties required of him in Rule 4(1) it appears to the accountant that there is evidence that the Solicitors' Accounts Rules have not been complied with or he becomes aware of any matter which appears to affect adversely any client account or any trust money held by the firm to a material extent, he shall include in the accountant's report signed by him such details of the contravention or matter."*
- (24) None of the above breaches committed by the Firm was reported in the following Accountant's Reports signed by the Respondent:-
- (a) dated 27 September 2013, for the period from 1 April 2012 to 31 March 2013;

- (b) dated 30 September 2014<sup>2</sup>, for the period from 1 April 2013 to 31 March 2014; and
  - (c) dated 30 September 2015, for the period from 1 April 2014 to 31 March 2015.
- (25) The Respondent therefore failed in his duty under Rule 4(2) of the ARR and therefore also failed to compile the Accountant's Reports 2013 – 2015 with adequate professional competence and due care. Based on the above, section 34(1)(a)(vi) of the PAO applies to the Respondent.
3. By a letter dated 23 October 2017, the Respondent admitted all complaints against him, namely the Complaint 1 and Complaint 2 (collectively known as the “**Complaints**”). He did not dispute the facts as set out in the Complaints. The parties agreed that the steps set out in Rules 17 to 30 of the Disciplinary Committee Proceedings Rules (“**DCPR**”) be dispensed with.
  4. By a letter from the Clerk to the Disciplinary Committee (under the direction of the Disciplinary Committee (“**DC**”)) to the parties dated 11 January 2018, the parties were informed that the DC had approved their joint application to dispense with the steps set out in Rules 17 to 30 of the DCPR in light of the admission made by the Respondent and directed the parties to make written submissions on sanctions and costs by 1 February 2018.
  5. The Respondent and the Complainant provided their respective submissions on sanctions and costs which should be imposed by the DC on 30 January and 1 February 2018.
  6. The DC has considered the submissions by the Complainant and the Respondent.
  7. The Complaints were found to be proved on the basis of the admission by the Respondent.
  8. In considering the proper order to be made in this case, the DC has had regard to all the aforesaid matters, including the particulars in support of the Complaints, the Respondent's personal circumstances, there was no record of past disciplinary orders against the Respondent and the conduct of the Respondent throughout the proceedings, in particular, the Respondent has not disputed the case thereby resulting in the considerable saving of time and costs.
  9. The DC takes particular note with regard to Complaint 1 that according to the Respondent's own internal policy, he was aware of the duty to retain engagement papers for a period of five years; and more importantly, the reasons provided by the

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<sup>2</sup> The Respondent confirmed on 26 June 2016 that the date on the 2014 Accountant's Report should be 30 September 2014, and not 30 September 2013.



Respondent as to the simultaneous unavailability of both the soft and hard copies of the working papers for the Accountant's Reports are highly unsatisfactory and can even be characterised as implausible or suspicious.

10. With regard to Complaint 2, the Respondent had overlooked breaches by the Firm which occurred over a period of 3 financial years and such breaches involved 88 debit balances in the total sum of HK\$27,062,303.55; and the Respondent failed to act as a proper safeguard to monitor the compliance of solicitor firms and thus there is a consideration of public interest involved.
11. The DC therefore orders that:-
  - (a) the Respondent be reprimanded under section 35(1)(b) of the PAO;
  - (b) the Respondent do pay a penalty of HK\$100,000 under section 35(1)(c) of the PAO;
  - (c) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant (including costs of the DC) in the sum of HK\$49,335 under section 35(1)(iii) of the PAO.

Dated 25 April 2018

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Mr. Wong Tim Wai  
Chairman  
Disciplinary Panel A

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Ms. So Man Wah, Miranda  
Disciplinary Panel A

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Mr. Lee Kwo Hang, Felix  
Disciplinary Panel B

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Ms. Yap Hiu Yee, Betty  
Disciplinary Panel A

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Dr. Kam Pok Man  
Disciplinary Panel B