Proceedings No.: D-10-0448H

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	
Li Kwok Cheung George (Membership no.: A02754)	RESPONDENT

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

Members: Mr. Kwong Chi Ho Cecil (Chairman)
Mr. Lam Sze Cay Kevin
Mr. Liu Ling Hong Stephen
Mr. Chan Kin Man Eddie
Mr. Cheung Yat Ming Brian

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 Li Kwok Cheung George, CPA ("**Respondent**").

THE COMPLAINT LETTER

2. The Complaint as set out in a letter dated 24 August 2017 from the Registrar to the Council of the Institute (the "**Complaint**")[1] is as follows:-

[1] The supporting documents referred in the footnotes to the Complaint paragraphs are not enclosed in this Order.

A. Background & Overall View

(1) Upbest Group Limited was and is a publicly listed company in Hong Kong. The business of Upbest Group is in the provision of a range of financial services, and among its subsidiaries is Upbest Securities Co. Ltd. ("**Upbest Securities**"). In 2003, the Respondent was an executive director of Upbest Group Ltd., with, inter alia, another executive director Charles Cheng Kai-ming ("**Cheng**"), and an independent non-executive director David Wong ("**Wong**"). At that time Wong was also the Managing Director of a tax-advisory company, International Taxation Advisory Services Limited ("**ITASL**").

(2) The Respondent and other parties participated in a fraud involving Grand Field Group Holdings Limited ("**Grand Field**"), another listed company in Hong Kong, in 2003 in the circumstances set out below[2].

(3) In 2002-03 Grand Field purported to invest in and then subsequently sell off an interest in a gas pipeline business in Chongqing, China (the "**Project**"). The Project was in fact bogus and fictitious as the group had no intention of pursuing the Project beyond establishing the corporate vehicles and entering into the formal agreements "on paper". The fraud was conceived primarily by the then Chairman of Grand Field, Wayland Tsang Wai-lun ("**Tsang**"), as a means to boost Grand Field's share price.

(4) In brief the fraud involved setting up a new company Sino Richest Limited ("**Sino Richest**"), of which shareholders were essentially nominees of Tsang and his wife Nancy Kwok Wai-man ("**Mrs. Tsang**"), the executive director of Grand Field. On 25 May 2002 a joint venture agreement ("**JV Agreement**") was entered into by Sino Richest with the purported PRC partner to set up a joint venture company, of which 80% of the share capital was to be contributed by Sino Richest[3]. On 30 May 2002 a share transfer agreement was entered into under which a wholly-owned subsidiary of Grand Field acquired a 75% share of Sino Richest for $63 million.

(5) On 4 June 2002 Grand Field issued a public announcement which stated that the acquisition of the Project represented an excellent opportunity for the group to diversify its business "into natural gas business in PRC…"[4]. The valuation of $106 million was stated to have been prepared by "an independent firm of professional valuers". Much of the information in that valuation report was made up or fabricated. Completion of the JV Agreement was conditional upon obtaining the necessary approvals and licenses from governmental authorities. Eventually a Business License and an Approval Certificate were purportedly obtained from the PRC authorities ("**Legal Documents**"). Both were in fact fake documents. In

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[2] The facts and events set out in this Complaint are extracted from the court judgements and transcript from the criminal proceedings referred to below.

[3] The documents concerning the setting up of the proposed Project referred to in this paragraph and the next are set out in **Annex 1**. A diagram showing the corporate structure of the proposed Project is at **Annex 2**.

[4] The public announcement of 4 June 2002 is at **Annex 3**.

September 2002, the new shares issued by Grand Field for the acquisition started to be traded on the Stock Exchange of Hong Kong ("**Stock Exchange**").

(6) During the above process Upbest Securities acted as financial adviser to Grand Field and handled the public announcement and circular. They were given the (fake) valuation report. However there is no evidence to show that they were aware of any irregularities, or the falsity of the valuation report, at that stage.

(7) As the capital injection envisaged under the JV Agreement did not take place as scheduled (but which was never intended to take place), the Stock Exchange began to investigate from late October 2002[5]. The correspondence with the Stock Exchange was primarily handled by Steve Au Yeung Keung ("**Au Yeung**"), a CPA who joined Grand Field in April 2002 as General Manager – Financial and Commercial Affairs, and subsequently also took up the position of Company Secretary.

(8) In the ensuing correspondence, Grand Field was unable to give any satisfactory explanation as to why the Project had not advanced forward. In February 2003, the Respondent (via Upbest Securities) was brought in to advise or assist Grand Field on how to respond to the Stock Exchange's investigation. With his assistance several pieces of correspondence to the Stock Exchange and a public announcement were drafted.

(9) In March 2003, a plan was devised (primarily) by Tsang to "sell-off" the Project so as to get rid of the continuing inquiries from Stock Exchange. Upbest Group was brought in as financial consultant on this purported sale, with advice being rendered by the Respondent, Cheng and Wong (via ITASL).

(10) The purported sale went ahead at the end of July 2003. Using a sum made available by Upbest Group and based on their advice, Grand Field purported to sell its interest in Sino Richest back to one of the 3 original shareholders for the sum of $32 million, and the proceeds were passed from the purported buyer to Grand Field, and then to Tsang, and eventually returned substantially to Upbest. The "sale" was in reality a sham as it was just a circular fund flow.

(11) In 2007 ICAC laid criminal charges in connection with the above fraud. Tsang and Mrs. Tsang were charged with (inter alia) defrauding Grand Field's shareholders and the Stock Exchange by dishonestly concealing that there had been no genuine acquisition of the Project, and falsely representing that there was a genuine disposal of the Project. Au Yeung testified under immunity and was not charged. Both Tsang and Mrs. Tsang were found guilty after a trial in the District Court (the "**Trial**")[6]. Their appeals against the conviction were dismissed by the Court of Appeal.

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[5] The correspondence concerning the Stock Exchange's investigation from October 2002 to May 2003 referred to in this Complaint is set out in **Annex 4**.

[6] "**Transcript**" refers to transcript of Au Yeung's testimony at the Trial; "**Judgement**" refers to the transcript of the verdict of the Trial; "**Judge**" refers to the Trial Judge. The court judgements or documents concerning the

(12) In addition, Tsang, Mrs. Tsang, the Respondent, Wong and Cheng were also charged with money-laundering, namely the $32 million proceeds in the sham sale. They were convicted of the charge at first instance, and it was affirmed by the Court of Appeal. The Court of Final Appeal however quashed the conviction on the legal ground that the $32 million sale proceeds were "clean" money and therefore could not sustain a money-laundering charge. In so doing, the Court of Final Appeal did not disturb any of the factual findings made by the lower courts.

(13) In 2016 the Institute pressed a charge of dishonourable conduct against Au Yeung, a CPA, by reason of his participation in the above fraud. He admitted to that charge and was removed as a member for 3 years in August 2016[7].

(14) The Respondent played a key role in advising Grand Field, at a critical juncture in the Stock Exchange's investigation, on how to conceal from the Stock Exchange the non-existence of the Project, and also in the subsequent sham disposal of the Project. These form the subject matter of the Complaint below.

B. Complaint

(15) Section 34(1)(a)(x) of the Professional Accountants Ordinance applies to the Respondent in that he was guilty of dishonourable conduct by reason of:-

(a) drafting or assisting in drafting correspondence issued by Grand Field to the Stock Exchange and/or public announcement issued by Grand Field from February to May 2003, which contained false or misleading statements as particularized below that the Project was a genuine one when it was not; and/or

(b) providing or rendering advice or otherwise assisting Grand Field in the purported sale of the Project in 2003, when the same was in fact a sham disposal consisting of a circular fund flow.

C. Material Facts and Circumstances in support of the Complaint

C1. The Events concerning the Correspondence with the Stock Exchange

(16) The Stock Exchange began corresponding with Grand Field from late October 2002 as to why capital injection of the Project had not occurred. Au Yeung as the Company Secretary was responsible for drafting or formulating the replies, though the letters would usually be signed by either Tsang or Mrs. Tsang.

(17) In the correspondence, Grand Field gave evasive or patently false answers to the Stock Exchange to explain the non-progress in the Project. At the Trial, Au Yeung

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Trial and related appeals are set out in **Annex 5**.

[7] D-15-1018H, order dated 9 August 2016 (**Annex 6**).

admitted that many of the matters stated in the correspondence were false[8], and those replies were given on the instructions of either Tsang or Mrs. Tsang. The Stock Exchange was not satisfied with the evasive replies given and persisted in pursuing further clarifications from the group.

(18) As a result of the above developments, Au Yeung testified that he started to have doubts that "the [Project] might not be in existence"[9], at about the end of 2002 or beginning of 2003.

(19) By fax dated 18 February 2003, the Stock Exchange reminded Grand Field that it had the obligation to keep the market promptly informed of the status and development in the joint venture. The Stock Exchange demanded that a public announcement be issued by Grand Field, with a draft to be submitted to the Stock Exchange for their approval by 20 February 2003.

(20) At that stage Grand Field considered that the Stock Exchange's inquiry was getting more and more difficult to handle, and Tsang instructed Au Yeung to instruct Upbest Securities to advise them on the investigation[10].

(21) Au Yeung sent to the Respondent the fax from Stock Exchange (dated 18 February) and a draft announcement prepared by him for the Respondent's comments. After the Respondent had confirmed its contents, it was sent to the Stock Exchange for vetting and it was published on 27 February 2003, in the same terms as drafted[11].

(22) Stock Exchange continued the inquiry with a fax dated 13 March 2003. When it was sent by Au Yeung to the Respondent for advice as to how to respond, the Respondent requested for the previous correspondence with the Stock Exchange. Au Yeung then sent him all the correspondence with the Stock Exchange dating back to 30 October 2002[12]. Au Yeung also sent the Respondent an email on 17

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[8] For instance, he admitted that some facts in the following letters were false –letter dated 18 November 2002 (Transcript 89T-90C), letter dated 17 January 2003 (Transcript 106F-H), letter dated 14 February 2013 (Transcript 108C-D), letter dated 20 February 2013 (Transcript 113A).

[9] Transcript 32 O-P; see also 24D-G, 33 I-J, 106 C-D, 235B-D, 288K, 438 C-K, 447M-O. As Au Yeung only joined Grand Field in April 2002 and might not be fully involved in the events when the purported joint venture was set up, he did not appear to know that the Project was a fraudulent one before his involvement in the Stock Exchange's investigations which commenced in October 2002.

[10] Transcript, 109 K-N.

[11] Transcript,109 N-U, 112L-O; Judgement §§576-7. The public announcement of 27 February 2003 is at **Annex 7**. The contents of the announcement that Grand Field was liaising with officials in Chongqing for setting up a wholly foreign enterprise or another Sino-foreign joint venture was false. Au Yeung testified that there was no such thing - Transcript 112S-113B.

[12] Transcript, 114P-115C, Judgement §§579, 715, 740. The Judge noted that Au Yeung's evidence as to whether he had sent the entire set of correspondence to the Respondent was contradictory and unsatisfactory in some respects (Jugdement §§293-7). Nonetheless, he found that it was inconceivable that Upbest would have failed to ask or demand the whole set of correspondence (if that was not in fact supplied) because, for example, they would not have known what the terms in the correspondence meant, as those definitions were contained in the

March setting out a sequence of events to assist the latter in formulating a response, and Au Yeung admitted that some of the information in that email was false[13]. Afterwards a draft was produced and/or discussed between the Respondent and Au Yeung, and issued to the Stock Exchange on 19 March[14].

(23) On a Saturday in mid-March 2003[15], Au Yeung attended a meeting in Shenzhen with Tsang and others. There were discussions as to how Grand Field could resolve the continuing inquiries from Stock Exchange once and for all, and the idea was raised that the Project could be sold back to the 3 original shareholders of Sino Richest. Au Yeung testified that, when he heard that, he then knew that the Project was a false one, because those 3 original shareholders were all nominees controlled by Tsang. It was like Grand Field selling the Project back to Tsang himself[16].

(24) The Judge did not fully believe Au Yeung's claim that he only became aware of the falsity of the Project at a relatively late stage (i.e. March 2003), but found that, taking his own evidence at its face, at the latest he must have become aware of the falsity when he attended the Shenzhen meeting[17].

(25) At the Shenzhen meeting, Tsang instructed Au Yeung to consult Upbest. Au Yeung then telephoned the Respondent, who said it was already noon-time, and there was nobody in the office, so perhaps the matter could be discussed next Monday[18]. Thus, 2 days later, on Monday's afternoon, Tsang and Au Yeung went to Upbest's Sheung Wan office to meet the Respondent and Cheng. The meeting was very short and Cheng said the idea (of selling back to the shareholders of Sino Richest) might not be viable, and that he needed some time to think about that. Tsang and Au Yeung then left. No other substantial discussion took place that day[19].

(26) The Stock Exchange issued a further fax dated 21 March 2003 to Grand Field, which was again sent to the Respondent for advice. Au Yeung sent to the

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first few letters. Thus he concluded that he was sure that the whole set of correspondence was sent (Judgement §740). The Court of Appeal agreed with this finding – CA Judgement dated 28 Nov 12, §181.

[13] Transcript, 443D-L.

[14] See Transcript 117F-I regarding the discussion between the Respondent and Au Yeung on the contents of the letter. It is not entirely clear whether it was the Respondent or Au Yeung who drafted the letter. On the one hand Respondent sent Au Yeung an email on 19 March 2003 at 10:54 enclosing a draft reply. Grand Field's eventual reply to the Stock Exchange was sent that day at about 14:19. The eventual reply was in all material aspects similar to the draft. On the other hand, Au Yeung said initially that the reply of 19 March was drafted by the Respondent, but later retracted that to say that he drafted it after discussing the matter with the Respondent (Transcript 115C, 116E-O; Judgement §§291, 578-580).

[15] The date was likely to be 15 March 2003.

[16] See Transcript 117K-118R, 251J-P, 491-492, 494A-F. The transcript at 251L-M which states "On that occasion it was discussed before me about selling the fixed thing back to the original shareholder…." (underline supplied) contains a typo. The word "fixed" should be "fake" – see Transcript 292M.

[17] Judgement §550.

[18] Transcript, 118T-119O.

[19] Transcript, 120T-122M; Judgement §587.

Respondent various sequences of events to enable him to formulate a response, of which Au Yeung admitted were untruthful[20]. Among the information sent was one email sent on 1 April 2003, of which the Respondent informed Au Yeung that it was not enough[21]. Thus Au Yeung gathered further information and forwarded the same to the Respondent. Based on the information provided by Au Yeung, Respondent drafted the reply to the Stock Exchange dated 8 April 2003[22].

(27) The Stock Exchange sent a fax to Grand Field dated 16 May 2003. The fax was again sent to the Respondent for his advice, and after discussing it with Au Yeung, the Respondent drafted a reply to Stock Exchange dated 23 May 2003[23].

(28) The correspondence referred to above include the announcement made on 27 February, were either drafted by the Respondent or drafted by Au Yeung based on advice or opinion rendered by the Respondent, contained, inter alia, the following false or misleading statements:-

(a) a continuation of the assertion that the Project existed;

(b) The Legal Documents no longer had effect (announcement), the documents could be extended or renewed based on PRC legal opinion and verbal confirmations from government officials (8 April letter), the China party would proceed to renew or extend the documents (23 May letter), when in fact the Legal Documents were forgeries, there was no such PRC legal opinion, and no one was proceeding to renew or extend the documents which were forgeries to start with;

(c) that Grand Field or Sino Richest were exploring some alternative action to continue with the Project, such as continuing the Project on its own (23 May letter), liaising with local officials for setting up a wholly-foreign enterprise or a Sino-foreign joint venture (announcement, 19 March letter), or negotiating with China Party to take up its interest (8 April letter), when in fact no such actions existed[24];

(d) the 8 April letter ended with the assurance that "[Grand Field] had been in negotiation with the relevant parties concerned to solve the problem and has the intention to carry on the business". This statement was patently false as Grand Field at that time was already taking steps to sell the (non-existent) Project so as to get rid of the Stock Exchange's inquiries once and for all.

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[20] Transcript, 444R-448I, 288J-R; see also 124H-128G.

[21] Transcript, 126R-127G.

[22] Transcript, 138F-L – Au Yeung said may be he "touched up on [the Respondent's] English a little". The Judge found that was not an apt description – the actual reply was based primarily on the draft -Judgement §292; see also §§581-3.

[23] Transcript, 139R-140M, Judgement §584.

[24] See eg Transcript 112S-113B.

(29) The Judge found that the line of correspondence between Grand Field and the Stock Exchange from October 2002 to May 2003 were "…desperate attempts to conceal from the Stock Exchange the real situation. The information provided was misleading, if not wholly false."[25]

(30) Even the Respondent's counsel submitted at the Trial that the correspondence was generally evasive, unresponsive and in some cases deliberately misleading[26]. The Respondent's submission at the Trial was that he too was misled by Au Yeung and did not have knowledge of the truth (ie Grand Field had no intention to proceed with the Project). Such contention was categorically rejected by the Judge who found that the Respondent was "well appraised of the situation"[27], and that he "had sufficient apprehension of the real situation Grand Field was in"[28], for (inter alia) the following reasons:-

(a) The Judge was sure that the Respondent was provided with the whole set of correspondence between Grand Field and the Stock Exchange[29].

(b) The Judge found that he knew as a fact that Grand Field had not made capital contribution and there was no real intent to make capital contribution or to pursue the Project. With all that information, he must have realized that the purported sale of the Project made little commercial sense[30].

(c) The Judge considered that it was "obvious to any man with ordinary reasoning ability that all the replies were desperate attempts not to answer directly the queries", and the Respondent, "being a professional financial adviser, must therefore be alerted that Grand Field had something important to conceal"[31].

(d) As for the various sequences of events sent by Au Yeung to the Respondent which contained numerous false facts, the Judge found that it was "extremely unbelievable that [the Respondent] would have accepted the

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[25] Judgement §530; see also §§542, 544. The Court of Appeal described the correspondence in these terms: "….the stark and deliberate evasiveness which pervades Grand Field's prolonged correspondence with the Stock Exchange is, in our judgement, patent to all who might read it save to those who would turn a blind eye to the obvious"; and "[the] contention that any person possessed of this correspondence would not readily have appreciated that Grand Field's interest in the [Project] was a sham, presupposes considerable naivety." (CA's Judgement dated 28 Nov 12, §§28 and 30).

[26] Judgement §716.

[27] Judgement §740.

[28] Judgement §723.

[29] Judgement §§740, 715. The Court of Appeal agreed with that finding, adding: "…[the] contention by counsel that even if [the Respondent] was provided with all the correspondence "none of that would have caused [the Respondent] to have any suspicion about whether the [Project] was 'genuine' or otherwise" is quite untenable" (Judgement dated 28 Nov 12, §181).

[30] Judgement §741.

[31] Judgement §716.

information at its face value….it was just ammunition provided to a comrade and not giving instruction to a professional in its real sense"[32]. Those information "could not stand any scrutiny by a professional in financing"[33].

(e) The Judge in particular emphasized that although the false facts supplied by Au Yeung might seem to provide a positive picture (that the Project existed etc), it would only "…have that effect ***on the face***, but taking everything [the Respondent] had been provided into account, a completely different picture was obvious."[34] (emphasis supplied)

(31) In the circumstances, the Respondent participated in drafting or giving advice on the false and misleading correspondence/public announcement, with knowledge of their falsity or being reckless as to the truth.

C2. Events concerning the Sham Disposal of the Project

(32) As mentioned above, in the Monday following the Shenzhen meeting in mid-March, Tsang and Au Yeung went to Upbest's office to meet with the Respondent and Cheng briefly about the purported sale. Cheng said he needed more time to think about it.

(33) After that brief meeting, the Respondent called Au Yeung advising that the "sale" be made to one of the original shareholders of Sino Richest instead of to all three[35]. Later, Logistic China Enterprises Ltd. ("**Logistic China**"), a company controlled by a Tsang's nominee, was initially designated to be the buyer[36].

(34) Later Au Yeung went to Upbest's office to meet with the Respondent and Cheng to obtain their advice on the arrangements for the sham disposal[37]. Respondent advised that a sum would be made available from it to enable Logistic China to "buy" the Project from Grand Field, but the sum would eventually be returned to Upbest. It was simply a circular fund flow. The Respondent illustrated on a piece of paper the circular fund flow arrangements, and then tore up the piece of paper. He also asked Au Yeung if there was any way in which the money could be paid "legitimately" to Tsang after Grand Field had received the sale proceeds. Au Yeung told him that the "amount due to director" item in the balance sheet could be

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[32] Judgement §722.

[33] Judgement §718.

[34] Judgement §723.

[35] Transcript 148I-M, Judgement §§588, 729. Au Yeung also asked if the price of $32 million was alright, to which the Respondent said it was not a big problem.

[36] The identity of the buyer was later changed from Logistic China to Zeng Qing Chun ("**Zeng**"), a Tsang's nominee. The Judge considered that Au Yeung's explanation for the change was unsatisfactory, but ultimately concluded that Au Yeung was only the company secretary and not someone who could make such a decision, of which the precise reason for the change remained unknown – Judgement §§303-4, Transcript 176F-177H.

[37] Transcript 149E-151I, 153D-G, 408P-S.

utilized. The Judge accepted these testimonies of Au Yeung[38]. Crucially, the Judge found that the Respondent's question obviously meant if there was a legitimate way "superficially"[39].

(35) The Judge also accepted Au Yeung's testimony that the Respondent said at the meeting that the fund flow had to be done through Wing Hang Bank[40]. Since a subsidiary of Grand Field already has an account there, but not Logistic China, arrangements were later made by Au Yeung to open an account at Wing Hang Bank for Logistic China[41]. After the meeting, Respondent called Au Yeung to inform him that Upbest's fees for making the above arrangement was $128,000[42].

(36) On or about 10 July 2003 the Respondent called Au Yeung and asked him and Mrs. Tsang to go to the office of Wong (ITASL) to obtain further advice on the circular fund flow arrangements. Au Yeung and Mrs. Tsang attended Wong's office that afternoon. At the meeting Wong gave detailed advice on the precise arrangements for circular fund flow, involving (inter alia) the issue of a promissory note by Logistic China as a security to an overseas company which would advance a loan to Logistic China for the purported purchase, and the $32m would eventually be returned to that overseas company[43]. After the meeting Au Yeung jotted down in his notebook Wong's advice on this circular fund arrangement[44]. The evidence was largely accepted by the Judge[45].

(37) After the above meetings Au Yeung prepared the necessary documentation for the transaction – such as receiving the assignments or agreements prepared by Wong, filling in the relevant details, and passing them onto Tsang/Mrs. Tsang or Logistic China for execution[46]. He also prepared the relevant minutes of meetings[47].

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[38] Judgement §§704, 729-731, 590-1.

[39] Judgement §731.

[40] Judgement §§732-4; Transcript 157R-158L. The Judge found that the effect of having all concerned parties having a bank account at Wing Hang Bank was that, if there is to be a circular fund flow, the transactions can be completed within one day without a single cent required out-of-pocket – Judgement §733.

[41] Transcript 157Q-158J, 211I-K; Judgement §594.

[42] Tracscript 153K-N, Judgement §593.

[43] Transcript 158Q -161F, Judgement §§598-600, 735-6. Au Yeung said initially that the fee for Wong's advice on the circular fund arrangements and the preparation of the relevant documents was $40,000. The Respondent said it was better for this fee to be paid by Grand Field through Upbest – Transcript 169I-N. However it appeared that Grand Field ultimately only paid $22,000, apparently for the reason that some of Wong's services were not required – Transcript 487N-S.

[44] Excerpts from Au Yeung's notebook are set out in **Annex 8**.

[45] Judgement §735-737, 764-771. The Judge found Au Yeung's evidence in relation to the meeting with Wong not entirely satisfactory because, inter alia, Au Yeung might have difficulties understanding what Wong was saying, and Au Yeung might have recalled incorrectly some of the details (§765). Nonetheless, the Judge was satisfied that Au Yeung did have a meeting with Wong in which Wong gave advice on how the circular fund flow was to be executed - §§768-771.

[46] Transcript 161J-N, 170G-171U, 176G-T.

[47] Transcript 170G-K, 35S-U.

Afterwards he deleted the documents in his computer, because he did not believe the "sale" to be true[48].

(38) The purported sale, or the circular fund flow, occurred on 31 July 2003. A prosecution diagram showing the details of the $32m circular fund flow is at **Annex 9**. The diagram only shows the movement of the $32m sale proceeds but outside the transactions shown on the diagram, the 75% interest of Grand Field group in Sino Richest was transferred to Zeng[49]. The Judge found that the purported sale was false, and that there existed a circular fund flow designed to ensure that the $32m paid out by Upbest would reach Tsang after the purported buy-back and then substantially returned to Upbest[50].

(39) Afterwards, the Stock Exchange was informed that Grand Field had received the $32 million sale proceeds. On 11 August 2003, Grand Field made a public announcement that it had disposed of its interest in the Project[51]. Au Yeung agreed that certain facts in the announcement were not true[52].

(40) The Judge found that the Respondent must have known that the purported sale was a "fake", because with all the information that he had, the purported sale of the Project made little commercial sense[53]. The Court of Appeal added that the evidence of the meetings attended by the Respondent – including the Monday meeting in March 2003 and the subsequent meeting attended by him, Cheng and Au Yeung – was "damning, once accepted"[54]. The Judge further found that, if the finding of the Respondent's subjective knowledge was incorrect, there were reasonable grounds for objective knowledge to be imputed to him, in the sense that a right-thinking member of the community with common sense would have reasonable grounds to believe that the purported sale of the Project was false, and he must have realized the existence of such grounds[55]. As such, the Respondent had actual or imputed knowledge of the falsity of the sham sale.

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[48] Transcript 161M, 162I-Q, 268J-M, 275Q-276F, 292G-J; Judgement §300.

[49] This was achieved by 3 agreements: (1) a share transfer agreement between Grand Field Group Investments (BVI) Ltd. ("**Grand Field BVI**") and Zeng dated 31 July 2003; (2) a deed of assignment of debt between Grand Field Group Holdings Ltd. and Grand Field BVI dated 15 July 2003; and (3) a deed of assignment of debt between Grand Field BVI and Logistic China dated 31 July 2003. See also receipts both dated 31 July 2003 issued by Grand Field BVI to (i) Logistic China for $32m; and (ii) Zeng for $1. See Transcript 170I-172U, 176F-177H. The above documents relating to the purported sale are set out in **Annex 10**.

[50] Judgement §§644, 705, 709.

[51] The public announcement of 11 August 2003 is at **Annex 11**.

[52] Transcript 178C-F.

[53] Judgement §§741-745. The Judge also referred to other suspicious features, such as if the device of promissory note was used as a collateral for the loan, why was that explained by Wong to Au Yeung, who represented the seller, rather than to the buyer who needed the loan? Why were the legal documents prepared by Wong sent to Au Yeung for follow-up, rather than to the buyer who needed the funds? Judgement §637.

[54] CA Judgement dated 28 Nov 12, §183.

[55] Judgement §§745

D. Conclusion

(41) The Respondent's conduct as set out above was dishonest and fraudulent. The general public, such as shareholders in Grand Field, as well as the Stock Exchange, were being lied to regarding the existence of the Project, as well as in its purported disposal.

(42) The Judge said that the Respondent's acts were serious. He joined an illegal scheme knowing full well that it was to cover up a false representation which was serious in its nature[56], and he knew full well that the Stock Exchange and Grand Field's shareholders had been defrauded. He used his professional expertise to cover up the truth and the purported sale was designed to end further queries so that the truth could be buried[57].

(43) In the circumstances, the above conduct was dishonourable conduct which would bring the reputation of the accountancy profession into serious disrepute.

THE PROCEEDINGS

3. The Notice of Commencement of Proceedings and procedural timetable was issued on 26 January 2018.

4. The Complainant's Case was filed on 1 March 2018.

5. Since the Notice of Commencement of Proceedings was issued, the Respondent returned all the letters sent by the Clerk to the Institute. All the letters were not opened and marked with manuscripts such as "no longer a member" and "return to sender".

6. The Clerk contacted the Respondent on 19 March 2018 by telephone. The Respondent confirmed that he had returned all the documents sent to his residential address; and he would continue to do so. He represented that he had resigned from membership a long time ago. Since then, he had not paid any membership fee. He also informed the Institute that he would not respond further to the complaint against him.

7. The Respondent represented that the HK legal and regulatory system was unfair. The Institute made new findings against him that were not considered during the court proceedings. He was innocent and he was acquitted by the Court of Final Appeal. However, no one could compensate him for the time he had spent in jail. He also represented that he could not afford the time and energy to respond further to the Institute's allegations.

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[56] The Respondent was himself responsible for some of the false representations made to the Stock Exchange, by reason of his advice on or contribution towards drafting the correspondence and public announcement in February to May 2003.

[57] Reasons for sentencing, §§67-69.

8. On 29 March 2018, the above documented telephone conversation was sent to the parties. In the same letter, the Committee asked the Complainant to state the laws and rules that support the Institute to instigate proceedings against a respondent who has claimed that he is no longer a member because he has resigned. The Complainant represented that the Institute has the power to retain the membership of someone being disciplined. This is reflected in section 49(3) of the PAO. It provides that the Council may refuse to accept the resignation of a CPA if it has reason to believe that he had been guilty of conduct which could justify the removal of his name from the register. In the present case, the Respondent has applied for resignation but his application was refused pursuant to the said power under section 49(3). The General Counsel of the Institute has communicated the same to the Respondent by his letter dated 13 March 2014.

9. The Committee also asked the Complainant to state the relevant rules governing the present proceedings in light of the Respondent 's refusal to participate. The Complainant quoted rule 36 of the Disciplinary Committee Proceedings Rules (DCPR) which states that where a party has failed to appear at the hearing, the Chairman or the Committee may take such steps as they consider appropriate or make such orders as to costs as they think fit.

10. By a letter dated 12 April 2018, the Committee asked the parties to file the checklists. The Complainant filed the checklist on 26 April 2018. The letter from the Committee was returned by the Respondent.

11. Having considered the above, the Committee, on 30 April 2018, directed the Respondent to make any written submissions to the Committee on or before 31 May 2018. Also, if there is no further response from the Respondent, the Committee would proceed to make a ruling on the complaint without any directions or substantive hearing on the matter. There was no response from the Respondent.

12. By a letter dated 20 June 2018, the Committee informed the parties that the complaint was found proven based on the available information; and directed parties to make submissions on sanctions and costs. The Complainant provided his submissions on sanctions and costs on 11 July 2018. The Respondent returned the aforementioned letter to the Institute.

13. In his submission on sanctions and costs by a letter dated 6 August 2018, the Respondent, inter alia, implied that he no longer has the intention to practice again in this profession.

FINDINGS OF THE DISCIPLINARY COMMITTEE

14. In considering the proper order to be made in this case, the Disciplinary Committee has had regard to all the aforesaid matters, including the particulars in support of the Complaints, and the conduct of the Respondent throughout the proceedings.

15. The Committee consider this is a serious case of dishonourable conduct involving fraud and dishonesty. In a nutshell, the Respondent acted as financial adviser to a listed company and advised and assisted it on how to conceal from the Stock Exchange the non-existence of a project, and also in advising the company to execute a sham disposal of the project so as to get rid of the Stock Exchange's inquiries once and for all.

16. Although the Respondent was not the chief instigator of the fraud (to create the non-existent project), he played a central role as Grand File's financial adviser. He along with others, were charged with money-laundering, namely the $32 million proceeds in the sham disposal of the project. Despite the conviction was overturned by the Court of Final Appeal on the legal ground that the $32 million sale proceeds were "clean" money and therefore could not sustain a money-laundering charge, the Court of Final Appeal did not disturb any of the factual findings made by the lower courts. Those facts and evidence as found against him at the trial form the subject matter of the present Complaint.

17. The present case involves a serious breach of integrity, which is a fundamental requirement of a professional accountant. As has been laid down in the well-known case of *Bolton v Law Society*[58], any lapse in integrity involving dishonesty would almost invariably result in the most severe sanctions being imposed, namely removal as a member or being struck off[59]. Such principles also apply to the accountancy profession[60].

18. The Committee is of the view that a removal of the membership is inevitable due to the nature of the breach and its seriousness. As the Respondent played an important part in the fraud and has shown no remorse throughout the proceedings, the Committee consider that, a permanent removal of the Respondent's membership reflect or be commensurate with the seriousness of the breaches, and to maintain the public's confidence in the integrity of the profession.

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[58] [1994] 1 WLR 512.

[59] ""Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal… … The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors." (at 518)

[60] *Chan Cheuk Chi v Registrar of HKICPA*, CACV 38/2012, 8 Feb 13, §36. In that case, the respondent gave false statements to the ICAC in an interview, attempting to mislead them, but the position was corrected by him during and before the interview was concluded. Together with the other breaches of integrity in that case, the respondent's membership was removed for 3 years.

19. The Committee would like to remind members of the profession that one cannot simply unilaterally ceasing to be a member of the Institute in an attempt to avoid disciplinary investigations by the Institute.

20. The Committee also finds that the Respondent should pay the costs and expenses of and incidental to the proceedings, including the costs and expenses of the Committee. Costs incurred by the Institute in disciplinary proceedings are financed by membership subscriptions and registration fees. Since it was the conduct of the Respondent which has brought him within the disciplinary process, it is only fair that he should pay the costs and expenses and not have them funded or subsidized by other members of the Institute.

21. The Complainant's costs in this case is not light because this is a complex commercial fraud and the Institute has to build up the case from voluminous materials from the criminal trial. Also during the investigation, the Respondent refused to co-operate by giving any meaningful representation or any substantive reply on his involvement. Although it is within the Respondent's right not to co-operate, he can hardly complain if as a result of his non-co-operation the Institute has to incur higher legal costs to build a case against him.

SANCTIONS AND COSTS

22. The Disciplinary Committee orders that:-

(a) the name of the Respondent be removed from the register of certified public accountants permanently under Section 35(1)(a) of the PAO;

(b) the Respondent be reprimanded under Section 35(1)(b) of the PAO;

(c) the Respondent pay a penalty of HK$375,000 under Section 35(1)(c) of the PAO; and

(d) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK$221,039.20 under Section 35(1)(iii) of the PAO.

The above shall take effect on the 40th day from the date of this Order.

Dated 11 September 2018

Mr. Kwong Chi Ho Cecil
Chairman

Mr. Lam Sze Cay Kevin
Disciplinary Panel A

Mr. Chan Kin Man Eddie
Disciplinary Panel B

Mr. Liu Ling Hong Stephen
Disciplinary Panel A

Mr. Cheung Yat Ming Brian
Disciplinary Panel B