

IN THE MATTER OF

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

BETWEEN

REGISTRAR OF THE HONG KONG  
INSTITUTE OF CERTIFIED PUBLIC  
ACCOUNTANTS

Complainant

AND

Respondent

**REASONS FOR DECISION**

Date of Hearing: 24<sup>th</sup> April 2009

Date of Reasons for Decision: 5<sup>th</sup> May 2009

**The Background**

1. The Respondent is a certified public accountant. Disciplinary proceedings were commenced against him pursuant to a Notice of Commencement of Proceedings dated 23rd June 2008.
2. The complaints arise from his position as the Liquidator of [Company A]. The basis of the complaint is the failure of [the Respondent] in the discharge of his duties as Liquidator of [Company A] and his conduct between the period from October 1998 to December 2006. He was ultimately removed from the said office by the Companies Court upon the application of the Official Receiver.
3. A date of 24th April 2009 was fixed for the disciplinary hearing ("the Hearing") to be held. The Complainant was legally represented at the Hearing whereas the Respondent was absent. The Disciplinary Committee after due consideration decided to proceed with the Hearing in the absence of the Respondent. The reasons will be stated herein below.

**Relevant Facts on Service**

4. The Committee accepted that on 1 April 2009 letters notifying the Hearing date were sent by first class post by the Clerk of the Disciplinary Committee ("the Clerk") to the last known residential address of [the Respondent] at the following:
  - i. [Address 1]

The Clerk also sent by first class post the notice of hearing to the Respondent at the commercial addresses ("the Commercial Addresses"):

- ii. [Address 2];
- iii. [Address 3].

Again the said posts were returned.

- 5. Further efforts were made by the Clerk to contact the Respondent by the last know mobile phone and fixed line of the Respondent. The efforts failed.
- 6. On 17<sup>th</sup> April 2009 the Clerk by hand sent the hearing bundles to the Respondent at the two Commercial Addresses. The hearing bundles were brought back to the Clerk's office as the commercial address in [District] was vacant and the Clerk was informed by the occupant of the commercial address at [Address 3] that there was no such person named [the Respondent] working in the said address.
- 7. Section 22(2) of the Professional Accountants Ordinance (Cap. 50) ("PAO") - Register of Certified Public Accountants provides:-

*"Upon the making of an order for the registration of an applicant under section 26(1); the Registrar shall enter in the register the following particulars of the person to be registered-*

- (a) his name;*
- (b) his residential address and any business address or , if he holds a practising certificate; his residential address and his registered office under section 31;*
- (c) the qualification by virtue of which he is registered; and*
- (d) such other particulars as the Council may direct."*

- 8. Rule 38 (1) of the Disciplinary Committee Proceedings Rules provides:

*"(1) Save as provided in Rule 33, any notice or document required to be sent under these rules may be:*

- (a) Delivered to the recipient by hand;*
  - (b) Sent to the recipient by post addressed, in the case of a certified public accountant, to the registered address and, in every other case, to the last known place of business or abode of the recipient;*
  - (c) Sent to the recipient's representative by hand, post or facsimile.*
- (2) Any notice or document sent to a recipient by post shall be deemed to be received at the time when the letter would be delivered in the ordinary course of post.*

- (3) *Save as provided in rule 33, the Chairman or the Disciplinary Committee may make such order for substituted service of notices and documents as in the circumstances of the case may appear just and reasonable. "*

9. Further, Rule 36 provides: -

*"If the Chairman or the Disciplinary Committee is of the opinion that a party has failed to appear at the hearing or has failed to comply with a requirement of these rules, (including the procedural timetable) or of any direction or order, the Chairman or the Disciplinary Committee may take such steps as they consider appropriate including dismissing the complaint without requiring the Respondent to answer the allegations, hearing and determining the complaint without hearing from the Complainant or the Registrar, or making such orders as to costs as they think fit. "*

10. The said residential address and commercial address at [Address 3] are the registered (according to the said section 22(2)) and last known addresses of the Respondent at the material times in this case.
11. By reason of the said procedural rules and provisions, it is the duty of the Respondent to give updated and proper addresses to the Registrar so that contact could at any time be made to the Respondent. Furthermore, delivery by hand and by post are proper and prescribed methods of service in these proceedings. By reason of the efforts of the Clerk to serve by post and by hand the relevant notice and hearing bundles on the Respondent at his registered addresses, particularly at the [Address 3] address, the Chairman and the Committee are satisfied that proper service and notice of the Hearing were given and that the Respondent failed to appear at the Hearing and that the Complaints should be heard and determined in the absence of the Respondent pursuant to the said Rule 36.

### **The Complaints**

#### **(i) First Complaint**

12. Section 34(1)(a)(vi) of the PAO applies to [the Respondent] in that he failed or neglected to observe, maintain or otherwise apply professional standards, namely paragraphs 2, 3 and 4 of the Fundamental Principles set out in the Statement 1.200 (in respect of the period before 30 June 2006) and paragraphs (c) and (e) of the Fundamental Principles set out in section 100.4, as elaborated in sections 130.1, 130.4 and 150 . 1 of the Code of Ethics for Professional Accountants (issued December 2005, effective on 30 June 2006) (the "Code") (in respect of the period on or after 30 June 2006), regarding his conduct as a liquidator of [Company A].

#### **The Statement and the Code**

13. The fundamental principles under Statement 1.200 on which the ethical guidance

of the Hong Kong Institute of Certified Public Accountants ("HKICPA") is based provide, inter alia, that:-

*Para 2: "A member should carry out his professional work with a proper regard for the technical and professional standards expected of him as a member and should not undertake or continue professional work which he is not himself competent to perform unless he obtains such advice and assistance as will enable him competently to carry out his task. "*

*Para 3: "A member should conduct himself with courtesy and consideration towards all with whom he comes into contact in the course of his professional work. "*

*Para 4: "A member should follow the ethical guidance of the HKICPA 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 HKICPA. "*

#### The Code

14. The applicable sections include: -

S100.4 (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. "*

Para (e): Professional Behaviour

*"A professional accountant should comply with the relevant laws and regulations and should avoid any action that discredits the profession."*

15. The relevant fundamental principles are elaborated in Sections 130 and 150 as follows:-

*S130.1: "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. "*

*S130. 4: "Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis."*

*S150. 1: "The principle of professional behaviour imposes an obligation on professional accountants to comply with the relevant laws and regulations and avoid any action that may bring discredit to the profession. This includes sections which a reasonable and informed third party, having knowledge of all relevant information, would conclude negatively affects the good reputation of the profession."*

(ii) Second Complaint

16. Section 34 (1)(a)(x) of the PAO applies to [the Respondent] in that he was guilty of dishonourable conduct. His acts and omissions, as a professional accountant, are regarded as dishonourable by accountants of good repute and competency (in respect of the period before 8 September 2004); he brought discredit upon himself, the Institute and/or the accountancy profession (in respect of the period on or after 8 September 2004).

Particulars of the 1<sup>st</sup> and 2<sup>nd</sup> Complaints

17. On 8 December 2006, the Official Receiver's Office ("OR") wrote to the Institute by way of a formal complaint. The OR's complaint related to the professional conduct of [the Respondent]. The details of the OR's complaint are set out in two reports dated 27 September 2006 and 1 November 2006 respectively (the "OR's Reports") and a Decision of the Honourable Madam [Justice K] dated [date]. In short the complaint relates to serious and repeated failures by [the Respondent] in the conduct of his office as liquidator of [Company A] over an extended period of time.
18. In view of [the Respondent]'s failures, the OR applied for and obtained a Court order removing him as liquidator of [Company A] on [date]. It was the decision of the Honourable Madam [Justice K] that [the Respondent] was found to have been in "serious dereliction of duty" such that he was to be removed as liquidator and his fees as liquidator be disallowed.

**Findings of the Committee**

The "OR" Reports

The 1<sup>st</sup> Report

19. In the absence of any explanations from the Respondent to the Committee, the Committee accepted the documentary evidence relating to the two OR's Reports. The 1<sup>st</sup> Report outlined the conduct of [the Respondent] in the course of the liquidation of [Company A]. [The Respondent] was found by the OR to have

committed breaches of sections 203 and 195 of the Companies Ordinance (Cap. 32) in the course of the audit of the liquidator's accounts:

*S195: "Where in the winding up of a company by the court, a person other than the OR is appointed provisional liquidator or liquidator under s194, that person -*

*(a) Shall forthwith give notice of his appointment to the Registrar in the specified form and give security in the prescribed manner to the satisfaction of the OR.. "*

*S203 (1): "Every liquidator (other than the OR) of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the OR, an account of his receipts and payments as liquidator. "*

*S203(3): "Tire liquidator shall furnish the OR with such vouchers and information relating to the account as he requires, and the OR may at any time require the production of and inspect, any books or accounts kept by the liquidator. "*

20. A number of requests and demands had been made to [the Respondent] regarding the liquidator's accounts and the liquidator's bond. There was inordinate and inexcusable delay on the part of [the Respondent] in finalising the liquidation. The repeated demands and requests were not met. The OR took out a summons on 1<sup>st</sup> August 2002 ("the 2002 Application") upon which the Honourable Madam [Justice K] made an Order compelling [the Respondent] to submit to the OR reply to queries, and liquidator's accounts and to provide security to the satisfaction of the OR within a certain timeframe. [The Respondent] then promptly filed an affidavit and undertook to ensure all returns would be submitted within 2 weeks. Notwithstanding the Order and the undertaking, [the Respondent] did not give any reply to the audit queries and failed to comply with the Order. Only a few accounts were submitted by [the Respondent]; however, no reply was given by him upon further format checking queries.
21. There had not only been non-compliance of the Order made by the Honourable Madam [Justice K] and continuous breaches of sections 195 and 203 of the Companies Ordinance, [the Respondent] had also failed to report to the OR during the liquidation process and to answer queries raised by the OR relating to outstanding investigations, outstanding assets to be recovered/realised, outstanding matters to be settled and the distribution of dividends.
22. By reason of the lack of response from [the Respondent], the OR took out yet another summons on 22 December 2005 ("the 2005 Application"). It was heard again by the Honourable Madam [Justice K]. Adjournments were sought by [the Respondent] to 6, 10 and 31 March. On 30 March 2006, a bundle of documents were submitted to the OR including a Revised Statements of

Accounts for the period from 29 January 2000 to 29 January 2004 and a Final Report to the creditors. However, the said documents did not address the queries raised by the OR. Queries of the OR remained unanswered and accounts from 29 January 2004 onwards remained outstanding.

23. The OR subsequently in April 2006 sent another letter to [the Respondent] in which a summary was set out with respect to the outstanding items which were required to be answered along with substantial enquiries regarding liquidator's account and administration of the liquidation. No reply was given. It was not until the day before the adjourned hearing did [the Respondent] send by fax an affidavit offering his explanations regarding the delay. However, such affidavit did not address the questions raised by the OR.
24. On 4 May 2006, the Honourable Madam [Justice K] accordingly took a very serious view of the persistent breaches of [the Respondent] and made an Order that the requested information be submitted by the Respondent within 28 days. A sealed copy of the Order dated 4 May 2006 was duly served on [the Respondent]. Notwithstanding the Order and the assurance and undertaking as stated in [the Respondent]'s affidavit dated 3 May 2006, no reply regarding the liquidator's accounts were submitted to the OR.
25. Subsequently [the Respondent] purported to provide a renewed bond merely by sending a fax of a policy cover to the OR. Demands regarding providing the original liquidator's bond to the OR were also ignored by [the Respondent]. The request by the OR on clarifying and confirming the matters about the compliance with the prerequisite requirements for the distribution of dividends was also ignored by [the Respondent].
26. Subsequent to [the Respondent]'s failure to comply with the Order dated 4 May 2006, a warning letter dated 19 July 2006 was sent by the OR demanding [the Respondent] for a substantive reply to the OR on or before 28 July 2006 failing which the OR would report the matter to the Court and a removal order would be sought. No reply was given. On 7 August 2006, a final warning was given to [the Respondent] of his failure to answer the enquiries and submit documents as requested.
27. In addition to the failure to perform his duties as a liquidator and to observe the requirements imposed on him under the Companies Ordinance and the rules, [the Respondent] further also breached his duties in the administration of liquidation. Complaints were received by the OR from creditors in 2001 with respect of the lack of advice about the progress of the sale of shares of the subsidiaries under [Company A]. The whereabouts of [the Respondent] could not be located. A complaint was received from a [Mr. X] in or about April 2002, being the creditor and a former director of [Company A] alleging that [the Respondent] never replied to written requests and/or telephone calls. In September 2002, [Mr. X] further complained about the failure of [the Respondent] to declare dividends despite [the Respondent] having given a notice to that effect.

28. The OR subsequently sent a letter to [the Respondent] in July 2002 requesting [the Respondent] to advise on the status regarding the sale of shares of subsidiaries, further investigations required and other questions to be answered. A letter was also sent out in October 2002 requesting [the Respondent] to clarify the updated status of the winding -up proceedings and about the settlement of the preferential payments and distribution of dividends. Again, there was no reply from [the Respondent]. Notwithstanding a letter dated 17 January 2003 from [the Respondent] of his intention to declare preferential payments and final dividends to creditors and seeking approval for the distribution and release of funds, there was no instruction given to the OR by [the Respondent] on the amount to be distributed.
29. Rule 142 (5) of the Companies (Winding-up) Rules was also not complied with in that upon the declaration of dividends, [the Respondent] had a duty to forthwith transmit to the OR a list of proofs filed with the Registrar under rule 101 , which list shall be in the Form 68 or 69, as the case may be, and the liquidation shall, if so required by the OR, transmit to him, office copies of all lists of proofs filed by him up to the date of the declaration of the dividend.
30. There was no submission of the requisite Form 68 or 69. Reminder letter/fax were sent to [the Respondent]; again there was no reply.
31. It was almost a year later that in February 2004 a fax from [the Respondent] was received by the OR. A 'Notice of Intended Preferential Payment and Dividend' and a Form 68 were attached to the Fax. [the Respondent] requested for a confirmation to proceed with the distribution of dividend. However, [the Respondent] had failed to discharge his duties by: -
  - (1) Failing to comply with Rule 142 (1): publication in the Gazette not more than 4 months before declaring a dividend of his intention to do so , and shall at the same time give notice to such of the creditors mentioned in the statement of affairs as have not proved their debts . Such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than 14 days from the date of such notice.

And

- (2) Failing to comply with Rule 142 (3): upon the expiration of the time fixed by this rule for appealing against the decision of the liquidator he shall proceed to declare a dividend, and shall, by publication in the Gazette, give notice of such dividend, and shall also send a notice of dividend to each creditor whose proof has been admitted.

#### The 2<sup>nd</sup> Report

32. The 2nd report concerned matters with respect to the 'renewed bond'. In October 2006 the OR received a letter from [Insurance Company] addressed to



the High Court Registrar and copied to the OR office. The letter was a notification from the Insurance Company that [the Respondent] was in default in premium payment despite repeated demands and that the Insolvency Practitioner's Bond would be terminated one month from the date of the letter. [The Respondent] had taken out a renewed bond without paying the premium for it. It was in the opinion of the OR that such was another incident of serious misconduct on the part of [the Respondent]. It was indeed a misleading behaviour on the part of [the Respondent] who, on the one hand had purportedly complied with the Court Order dated [Date] by sending a policy cover to the OR, yet, on the other hand, defaulted to pay the Insurance Company the necessary premium to support and maintain the policy. It then became obvious as to why [the Respondent] did not and was not able to produce the original renewed bond at the OR's repeated request. No disclosure was made regarding the default of premium payment.

33. Requests to rectify the omissions were not responded to by [the Respondent]. Due to the persistent lack of reply from [the Respondent] and inaction on [the Respondent] to finalise the liquidation, the OR eventually took out the 2005 application and an Order dated [Date] was made by the Honourable Madam [Justice K] requiring [the Respondent] to deal with the outstanding matters via an affidavit. There was no compliance with the Order. The OR took a very serious view of the inordinate and inexcusable delay of [the Respondent] in finalising the liquidation, taking into consideration that as at 2006, he has already been appointed as the liquidator for almost 8 years as at 2006. The OR also took a serious view as to the serious misconduct as mentioned above. Finally, a removal application was made by the OR which was granted and his fees disallowed.

#### Court Decisions

34. In HCCW /1998, a winding-up order was made against [Company A] in July 1998. [The Respondent] and [Mr. Y] were jointly appointed as the liquidator of [Company A]. Since March 2000, [the Respondent] has been acting as the sole liquidator of [Company A]. In the course of audit of the liquidator's accounts, the OR became aware of breaches of various provisions of the Companies Ordinance (Cap. 32) ("the Ordinance") and the Company Winding Up Rules ("the Rule"), including but not limited to sections 203 and 195. [The Respondent] had also failed to declare dividends to the creditor and failed to report to the OR the status of the administration of the estate of [Company A]. The OR made a number of requests and demands on [the Respondent] and raised queries regarding the liquidator's accounts and the liquidator's bonds. [The Respondent] did not reply or comply with the requests and demands.
35. In summary, the complaints of misconduct made to and accepted by the Court against the Respondent include: -
  - (1) Failure to comply with the orders made on [Date] and [Date] upon the

application of the OR under section 204 of the Ordinance;

- (2) Failure to submit liquidator's accounts in accordance with section 203 (1) and failure to furnish the OR with information relating to the liquidator's accounts in accordance with section 203 (3);
  - (3) Failure to provide security to the Official Receiver in accordance with section 195;
  - (4) Failure to cause to be filed with the Registrar of the court a verified statement of affairs in accordance with rule 39 (1);
  - (5) Failure to cause to be filed with the Registrar of the court a list of proofs of debt in accordance with rule 101;
  - (6) Failure to take effective steps to declare and distribute dividends to creditors in accordance with rule 142;
  - (7) Failure to proceed with the liquidation with reasonable expedition;
  - (8) Failure to forward to the OR reports on the position of the liquidation of the [Company A] in accordance with rule 162 (1); and
  - (9) Persistently ignoring reminders and enquiries raised by the OR in the exercise of his functions and powers under the Ordinance and the reminders.
36. The Honourable Madam [Justice K] agreed that there were persistent breaches of section 203 regarding the submission of the liquidator's accounts and persistent failure to submit renewed liquidator's bonds. It was held that there was serious misconduct on the part of [the Respondent], and he had failed to conduct the liquidation of [Company A] effectively, efficiently and vigorously.
37. The attitude of [the Respondent] was found by the Court to be unprofessional and irresponsible. [The Respondent] had given an undertaking to remedy the defects and to comply with the orders. However, [the Respondent] did not commit himself to the undertakings. An Order was thus made to remove [the Respondent] as not a fit and proper person to act as the liquidator of [Company A]. Fees of him as the liquidator were disallowed in view of his serious dereliction in duty.
38. The Committee's attention was also drawn to HCCW /1998 wherein, a winding-up order was made against [Company B] in October 1998. [The Respondent] and [Mr. Y] were jointly appointed as the liquidator of [Company B]. Since 1999, [the Respondent] has been acting as the sole liquidator. The Official Receiver issued a summons to remove [the Respondent] and was of the

opinion that [the Respondent] was not a fit and proper person to act as the liquidator on the basis that he had committed serious misconduct and had failed to conduct the liquidation of [Company B] effectively, efficiently and vigorously in that: -

- (1) He had failed to pay to the Companies Liquidation Account money received by him as liquidator in accordance with sections 202 (1) and (2);
  - (2) He had misapplied the assets of the [Company B] for unlawful payments of his fees and disbursements without first seeking approval of the court under section 196 (2)(b) and without observing the priority of payment under rule 179;
  - (3) He had failed to submit the liquidator's accounts in accordance with section 203 (1);
  - (4) He had failed to send the OR reports on the position of the liquidation of the [Company B] in accordance with rule 162 (1);
  - (5) He had failed to proceed with the liquidation with reasonable expedition; and
  - (6) He had persistently failed to respond to the enquiries and the reminders raised by the OR in the exercise of the OR's functions and powers under the Ordinance.
39. The Honourable Madam [Justice K] was satisfied that the conduct of [the Respondent] was such as to warrant his removal as the liquidator of [Company B] and made the removal order accordingly.
40. In HCMP /2008, a Disqualification Order was made against [the Respondent]. The Honourable Madam [Justice K] held that the Court was satisfied that [the Respondent] had been guilty of breach of his duties as the liquidator of [Company A] and [Company B]. It was held by the Court that the breaches of duties were sufficiently serious to warrant the exercise of the discretion in making a Disqualification Order pursuant to section 168G (1)(b) of the Ordinance, which provides that:
- "The Court may make a disqualification order against a person if, in the course of the winding up of a company, it appears that he -  
(b) has otherwise been guilty, while an officer or liquidator of the company or receiver or manager of its property, of any fraud in relation to the company or of any breach of his duty as such officer, liquidator, receiver or manager. "*
41. The discretion was exercised after the Court was satisfied that [the Respondent] had been guilty of a breach of his duties as the liquidator of the two companies.

Warnings and opportunities had been given to [the Respondent] since 2002; he had persistently failed to discharge his duties as the liquidator of the companies and to observe the requirements imposed on him by statute.

42. It was also the opinion of the Court that a disqualification order was appropriate for the protection of the public. 6 years of disqualification was imposed. The effect of the Order was that [the Respondent] shall not, without leave of the Court, be a company director, a liquidator, a receiver or manager of a company's property, or in any way be concerned or take part in the promotion, formation or management of a company during the 6 years.
43. There was extensive failure by [the Respondent] to observe the Companies Ordinance and the Winding-Up Rules. [The Respondent] also failed to honour the undertakings he had given to remedy the defects of the liquidations.

#### **Conclusion on Liability**

44. The gist of the principles and rules relied on by the Complainant is that an accountant must discharge his duty with diligence and competence and not to dishonour his role as accountant. Having regard to the abovementioned facts and evidence, the Committee is of the view that [the Respondent] is guilty of the 2 complaints as particularised and was in breach of the relevant principles and rules relied on by the Complainant. [The Respondent] had not performed his duty in the capacity as a professional accountant; nor had he discharged his duties or observed the requirements imposed on him by statute, rules and the Court as a liquidator of [Company A]. The shareholders and creditors were prejudiced by reason of his misconduct. On a balance of probabilities the 2 complaints are found to have been proved. In finding so, the Committee does not take into account the Respondent's conduct in relation to the affairs of [Company B].

#### **Sanctions**

45. With respect to sanctions, section 35(1) of the Professional Accountants Ordinance (Cap. 50) provides: -

*"If a Disciplinary Committee is satisfied that a complaint referred to it under section 34 is proved, the Disciplinary Committee may, in its discretion make any one or more of the following orders -*

- (a) *An order that the name of the certified public accountant be removed from the register, either permanently or for such period as it may think fit*
- (b) *An order that the certified public accountant be reprimanded;*
- (c) *An order that the certified public accountant pay a penalty not exceeding \$500,000 to the Institute;*
- (d) *An order that the certified public accountant pay the costs and expenses of and incidental to an investigation against him under Part VA;*
  - (da) *An order that the practising certificate issued to the certified*

- public accountant be cancelled;*
- (db) *An order that a practising certificate shall not be issued to the certified public accountant either permanently or for such period as the Disciplinary Committee may think fit;*

*and the Disciplinary Committee may in any case-*

- (i) *provide for an order to take effect on such date as the Disciplinary Committee thinks fit;*
- (ii) *provide for an order to take effect only upon the happening or non-happening of such event within such period as may be specified by the Disciplinary Committee;*
- (iii) *make such order as the Disciplinary Committee thinks fit with regard to the payment of costs and expenses of and incidental to the proceedings, whether of the Institute (including the costs and expenses of the Disciplinary Committee) or of any complainant or of the certified public accountant, and any costs and expenses or penalty ordered to be paid may be recovered as a civil debt.*
- (2) Nothing in this section shall be deemed to require a Disciplinary Committee to inquire into the question whether a professional accountant was properly convicted but the Committee may consider the record of a case in which such conviction was recorded and such other evidence as may show the nature and gravity of the offence.*
- (3) A Disciplinary Committee shall cause a copy of any order made under subsection (1)(a) or, if the order is varied on appeal, the order as so varied to be published in the Gazette together with a summary of the nature of the complaint to which the order relates:*
- Provided that no order shall be so published before the expiry of 30 days after the date of service of the order on the professional accountant under section 38(1) or, in the case of an appeal made to the Court of Appeal against the order under section 41, before the appeal is finally determined "*

46. The Respondent has no previous record of misconduct. Taking into consideration the nature of the misconduct and persistent breaches of duties on the part of [the Respondent] over a long period of time, the Committee considers that this case is a case of extremely serious misconduct.
47. [The Respondent] having taken no part in the Hearing, no mitigating factors were put forward. There had been no response or representation throughout the disciplinary proceeding to explain his conduct. No explanations were offered by [the Respondent] regarding his failures.
48. The Committee considers that in light of the serious misconduct of the Respondent and his attitude towards the demands of the OR and the Court, the Respondent is not a fit person to continue to be registered as a certified public

accountant. He has so demonstrated by his persistent breach. The public would lose confidence in the profession if he is not struck off from the register permanently. The Committee is aware that such Sanction is the most serious penalty and that the Respondent has no previous record. However, given the above considerations, the Committee is of the view that the said sanction is the only appropriate one and the Committee so decides.

49. The Committee also considers it appropriate in this case to order a financial penalty on the Respondent and that he should bear the costs incurred by the Complainant and in relation to the proceeding.

#### **Order**

50. In the premises, the Committee makes the following orders:-

- (1) The name of the Respondent be removed from the Register permanently in respect of each of the 2 Complainants such removal to take immediate effect;
- (2) Penalty of HK\$50,000 to be paid by the Respondent to the Institute of Certified Public Accountants for the 2nd Complainant;
- (3) The Respondent shall pay costs to the Complainant in the sum of \$120,000 and costs of the disciplinary proceeding in the sum of \$50,000.

Dated the 5th day of May 2009.